

# Report to the Executive Director for Place

## Proposed definitive map and statement modification order – parts of Footpath 17, Woodlands at Slough House

### For Decision

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

**Local Councillor(s):** Cllr D Tooke, Dorset Council member for Cranborne & Alderholt

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

Report Author: Kerry Dorrington  
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**Report Status:** Public

**Brief Summary:** This report considers the evidence relating to the recorded route of parts of Footpath 17, Woodlands and considers modifying the definitive map and statement to correct the drafting errors on parts of the route of the footpath as shown on Drawing T724/22/1. A full consultation exercise was carried out in September - November 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 parts of the recorded route of Footpath 17, Woodlands from the parts as shown A-B and C-D to those shown A-E-F-B and C-G on Drawing T724/22/1 (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- b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.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 parts of the recorded route of Footpath 17, Woodlands require modifications as described.

- b) The available evidence shows, on balance, that parts of the correct route of Footpath 17, Woodlands 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 2017 when the route of Footpath 17, Woodlands was checked in advance of the submission of a potential Public Path Diversion Order application.

### **Description of the route**

- 1.2 The current recorded route of parts Footpath 17, Woodlands are from the unaffected part of Footpath 17, in the north western corner of a field at point A, south east across fields and crossing the river to rejoin the unaffected part of Footpath 17 at point B, and, from the unaffected part of Footpath 17, east of Slough House at the concrete driveway at point C, east north east and north east to its junction with Bridleway 13 at Slough Lane at point D, as shown on Drawing T724/22/1 attached as Appendix 1.
- 1.3 The proposed new route of parts of Footpath 17, Woodlands are from the unaffected part of Footpath 17, in the north western corner of a field at point A, south across the field to point E then continuing generally south south east across the field to point F and east, crossing the river, to rejoin the unaffected part of Footpath 17 at point B, and, from the unaffected part of Footpath 17, east of Slough House at the concrete driveway at point C, generally north north east along the driveway and across the corner of a field to its junction with Bridleway 13 at Slough Lane at point G.
- 1.4 The current definitive route and the proposed modified route affects one landowner. The landowner was consulted on the proposals and no comments were submitted.

## **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.
- 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 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 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**

- 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 September - November 2022 and no objections were received.
- 6.2 Cllr D Tooke, Dorset Council member for Cranborne & Alderholt was consulted on the proposals but made no comment.

6.3 The following four submissions commented on the proposal to modify the route of part of Footpath 17, Woodlands:

Name	Comments
Southern Gas Networks	SGN do not appear to have plant in this area.
Historic England	Thank you for consulting us on the proposed works concerning the modification to Footpath 17 Woodlands at Slough House. We have no comment to add as the works will not impact on any heritage assets.
Senior Archaeologist, Dorset Council	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.
Knowlton Parish Council	<p>Members have considered the proposal and their concern with this modification will be the cost of moving the recently installed footbridge and the 'meandering' route from A-E-F-B.</p> <p><b>Officer comment:</b> Under the powers of the Highways Act 1980, Part 5, Section 92, the highway authority has powers to reconstruct a bridge withing 200 yards of an old one. It would therefore be possible for the bridge to remain in its current position; however, this would be for Dorset Council's Greenspace Management Team/Senior Ranger to discuss with the landowner in more detail.</p>
Ramblers, East Dorset Group Footpath Secretary	I have recently walked the modified route on a circular walk from White Sheet Hill. I have carried out some desk-based research, using the National Library of Scotland <a href="http://maps.nls.uk/os">website</a> (maps.nls.uk/os). Maps Dorset Sheet <a href="#">XXVI.NW</a> surveyed 1887, published 1887, and Dorset Sheet <a href="#">XXVI.NW</a> revised 1900, Published 1902, show the proposed modified route. I can find no other documentary evidence.
BT Openreach	Openreach records indicate that no apparatus exists within the area of your proposed works.

## 7. Analysis of consultation responses

### 7.1 None of the submissions contain evidence for consideration.

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

### **Ordnance Survey Maps**

- 8.1 The Ordnance Survey Dorset Sheet XXVI.NW Surveyed: 1887, Published: 1887 (scale 6 inches to the mile) map shows the route of Footpath 17, Woodlands running from Woodlands Farm to Knob's Crook and the sections to be modified as double pecked lines (indicating an unfenced path) annotated alongside 'F.P' (footpath).
- 8.2 The Ordnance Survey Dorset Sheet XXVI.NW Revised: 1900, Published: 1902 (scale 6 inches to the mile) map also shows the route of Footpath 17, Woodlands running from Woodlands Farm to Knob's Crook and the sections to be modified as double pecked lines.
- 8.3 The Ordnance Survey maps (attached as Appendix 3) show the physical characteristics on the ground at the date of the map and provide evidence of the path's position that supports the proposed modifications A-E-F-B and C-G as shown on Drawing T724/22/1 (Appendix 1).

### **Parish Survey**

- 8.4 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 and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.
- 8.5 The 1952 Parish Survey map shows the whole of the route of Footpath 17, Woodlands (previously Footpath 28, Woodlands) as a solid black line running from Woodlands Farm to Knob's Crook. In addition, there is also a faint grey line which has been drawn further south for the majority of the route.
- 8.6 The Parish Map is poorly drawn, with most of the rights of way in the parish being drawn incorrectly. A number of the routes have also been depicted with multiple lines. It would have been the intention to follow the lines that were shown on the Ordnance Survey base map to record the rights of way within the parish.
- 8.7 The Parish Survey notes describe the route of Footpath 27, Woodlands as 'from junction of paths 4,5 and 7 Woodlands Farm to path 25 at Knob's Crook'.
- 8.8 The 1952 Parish Survey documents are attached at Appendix 3.

### **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 shows the route of Footpath 17, Woodlands as a solid purple line (indicating a public footpath) from Woodlands Farm to Knob's Crook. It shows the path's position that supports the proposed modifications A-E-F-B and C-G.
- 8.11 The 1964 Provisional Map and the 1967 First Definitive Map both show the route of Footpath 17, Woodlands as a thick solid purple line annotated alongside 'F.P' (footpath), running from Woodlands Farm to Knob's Crook. The maps show a change in the path's position to points A-B and C-D.
- 8.12 The 1974 Revised Draft shows the route of Footpath 17, Woodlands as a solid purple line, annotated alongside 'F.P' (footpath), running from Woodlands Farm to Knob's Crook. The map shows a further change in the path's position to a route closer to points A-B and C-G.

### **Aerial photographs**

- 8.13 Aerial photographs from 1947, 1972, 1997, 2002, 2009, 2014 and 2017 have been examined but they do not provide strong evidence as the route of Footpath 17, Woodlands is not fully visible through the fields on the ground.
- 8.14 The aerial photographs do show that over time the entrance to the driveway to Slough House and the farm buildings has moved further south east from point G, closer to point C.

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

- 9.1 The current Definitive Map of rights of way, sealed in 1989, shows the route of parts of Footpath 17, Woodlands as a thick purple line corresponding with the route as shown points A-B and C-D on Drawing T724/22/1 (Appendix 1).
- 9.2 Dorset Council records indicate that the route of parts of Footpath 17, Woodlands as shown from points A-E-F-B and C-G was the path as recorded on the 1887 and 1902 Ordnance Survey maps and the 1959 Draft Map. However, the route was incorrectly drafted on all subsequent maps and the current definitive map.

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9.3 No legal orders have been discovered that have changed these parts of the route of Footpath 17, Woodlands.

## **10. Financial Implications**

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

## **11. Environmental Implications**

Any environmental implications arising from the proposed modification 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 the proposed modification 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 route. It is considered that there is sufficient evidence for the “subsist” test to be met.

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16.2 The balance of evidence demonstrates that the parts of route shown from points A-B and C-D arose as a result of a drafting error when the Definitive Map was sealed in 1989 and the proposed parts of the route from points A-E-F-B and C-G is how the route of Footpath 17, Woodlands should be recorded.

16.3 Therefore, the recommendation is that that the Definitive Map and Statement should be modified to delete parts of Footpath 17, Woodlands as shown A-B and C-D and instead add parts as shown A-E-F-B and C-G on Drawing T724/22/1 (Appendix 1).

16.4 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.

## 17. Appendices

1 Drawing T724/22/1

2 Law

3 Documentary evidence (extracts from key documents):

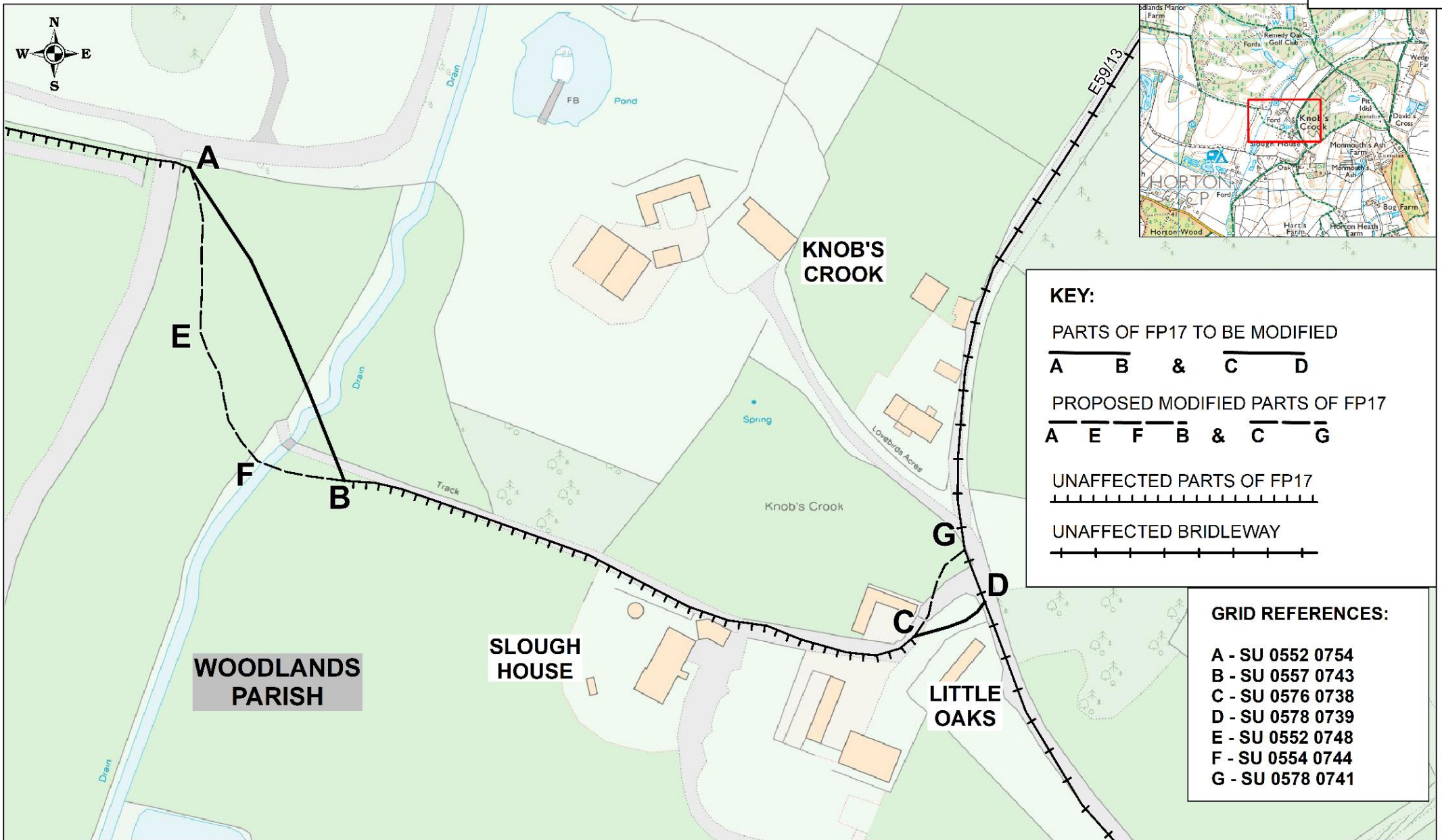
- 1887 The Ordnance Survey Dorset Sheet XXVI.NW Surveyed: 1887, Published: 1887 (scale 6 inches to the mile)
- 1902 The Ordnance Survey Dorset Sheet XXVI.NW Revised: 1900, Published: 1902 (scale 6 inches to the mile)
- 1952 Parish Survey Map and description
- 1959 Draft Map
- 1964 Provisional Map
- 1967 First Definitive Map
- 1974 Revised Draft Map
- 1989 Current Definitive Map
- 1972 Aerial Photograph
- 2002 Aerial Photograph
- 2009 Aerial Photograph

## 18. Background Papers

The file of the Executive Director, Place (ref. RW/T724).

**Date: December 2022**





<p><b>WILDLIFE &amp; COUNTRYSIDE ACT 1981</b></p> <p><b>PROPOSAL TO MODIFY PARTS OF FOOTPATH 17, WOODLANDS AT SLOUGH HOUSE</b></p> <p>THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS</p>	<p><b>Ref: T724/22/1</b></p> <p>Date: 14/09/2022</p> <p>Scale: 1:1700</p> <p>Drawn by: KJS</p> <p>Cent X: 405,701</p> <p>Cent Y: 107,457</p>	 <p>© Crown copyright and database rights 2022          OS 0100060963. Aerial Photography ©          UK Perspectives 2002 &amp; © Getmapping 2005, 2009          &amp; 2014. © Getmapping Plc and Bluesky International          Limited (2017 onwards)</p>
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## 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

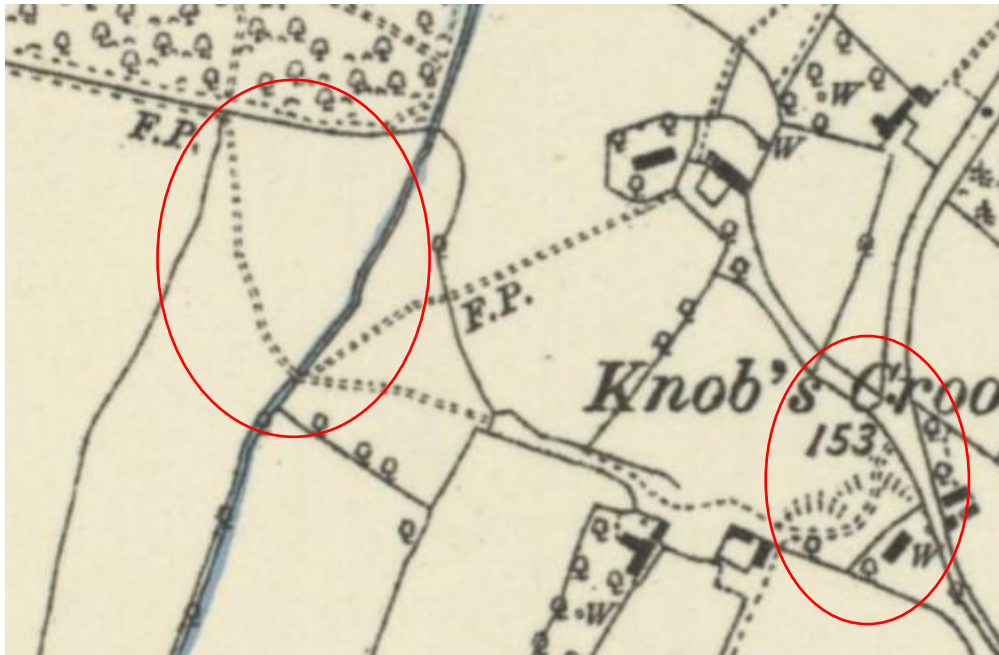
4.1 The National Parks and Access to the Countryside Act 1949 required the County Council as "Surveying Authority" to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

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### Extracts from key documents

(See the file of the Executive Director, Place (ref. RW/P238) for copies of other documents mentioned)

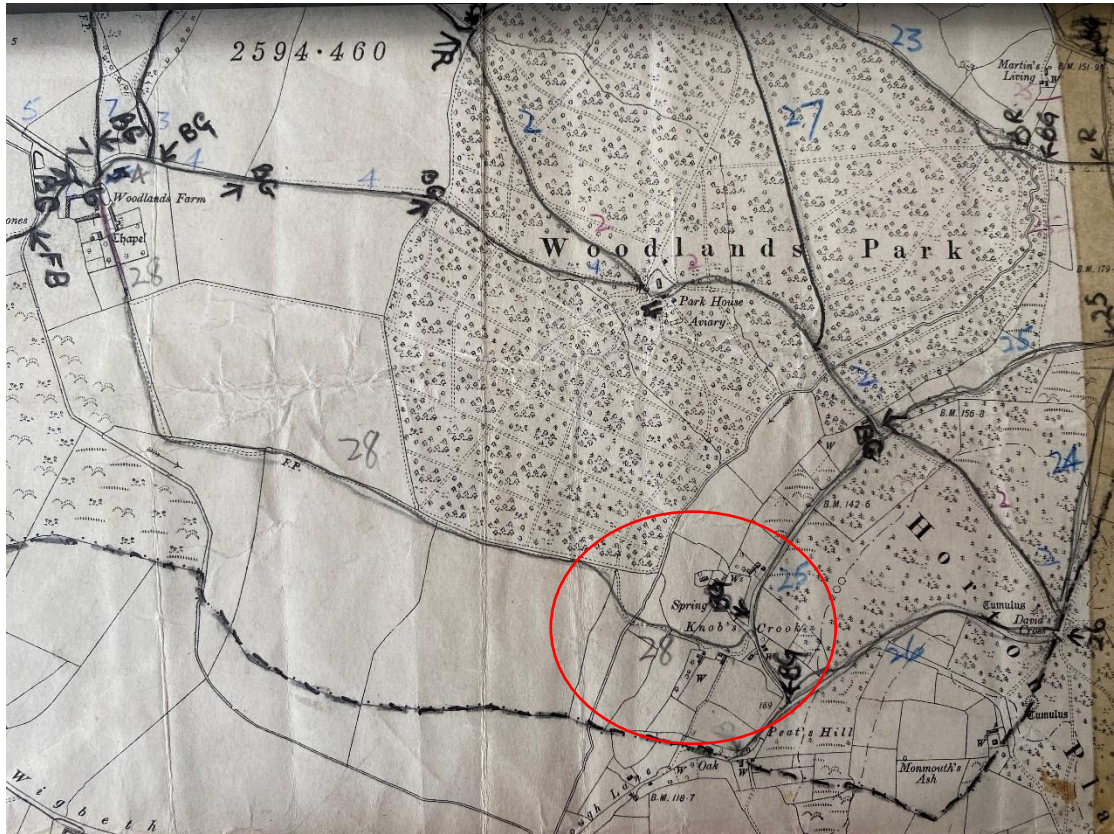
**1887 Ordnance Survey Dorset Sheet XXVI.NW**  
**Surveyed: 1887, Published: 1887 (scale 6 inches to the mile)**  
**(enlarged)**



**1902 Ordnance Survey Dorset Sheet XXVI.NW Revised: 1900,**  
**Published: 1902 (scale 6 inches to the mile) (enlarged)**



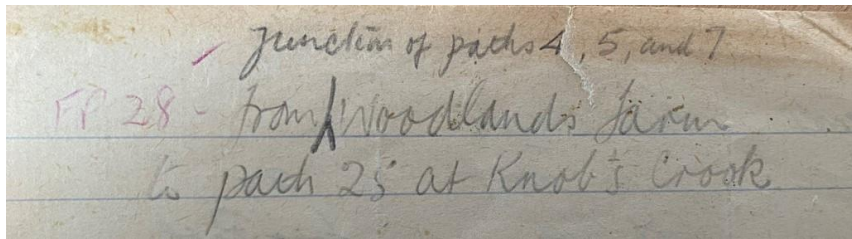
**1952 Parish Survey Map for Woodlands parish (enlarged)**



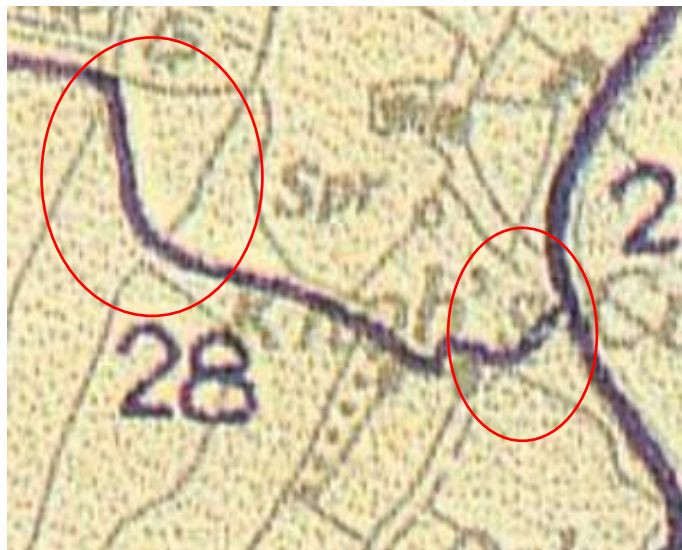
**1952 Parish Survey Map (enlarged)**



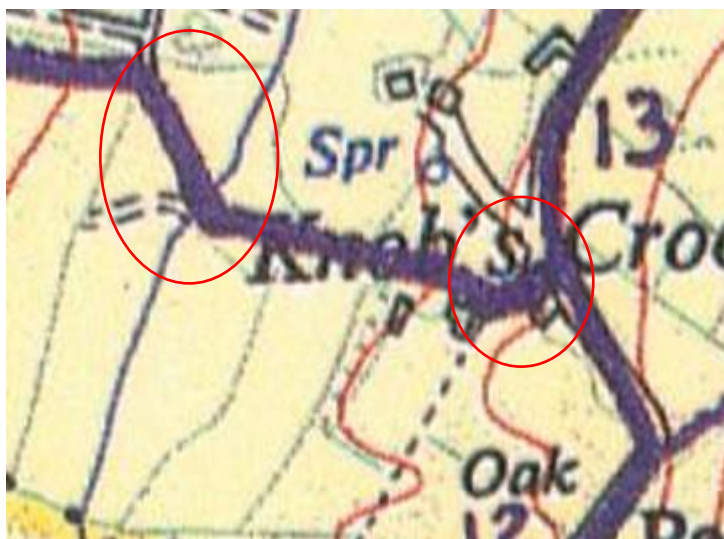
**1952 Parish Survey Description**



**1959 Draft Map (enlarged)**



**1964 Provisional Map (enlarged)**



**1967 First Definitive Map (enlarged)**



**1974 Revised Draft Map (enlarged)**





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**1989 Current Definitive Map (enlarged)**



**1972 Aerial Photograph (enlarged)**



**2002 Aerial Photograph (enlarged)**



**2009 Aerial Photograph (enlarged)**



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Woodlands at Slough House

**Recommendations accepted:**

**Signed:**

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

Date:.....9 December 2022.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning