

Officer Delegated Decision

Date: 03/10/2025 (see Report to the Executive Director for Place)	
Decision: <p>(a) The application be accepted, and an order made to modify the definitive map and statement of rights of way by adding a footpath from Footpath 3, Bradford Abbas south south east along the River Yeo and east to rejoin Footpath 3, Bradford Abbas as shown A-B-C-D-E on Drawing T725/24/1; and</p> <p>(b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.</p> <p>To view a copy of the Report please see the Definitive Map Modification Order Register https://gi.dorsetcouncil.gov.uk/rightsofway/definitivemap/register/Details/T725 (Decision taken is detailed within the Scheme of Delegation in the Council's Constitution.)</p>	
Key Decision: No Please see definition below.	
Reason(s) for Decisions: <p>(a) The available evidence shows, on balance, that the claimed right of way subsists or is reasonably alleged to subsist; and</p> <p>(b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.</p>	
Decision Maker (Name and Title): Vanessa Penny Definitive Map Team Manager Spatial Planning	
Alternative options considered and rejected:	N/A
Any conflict of interest declared by any member consulted: N/A	
Any dispensation granted in respect of any declared conflict of interest: N/A	

Definition of Key Decisions

Key decisions are defined in the Constitution as decisions of the Cabinet which are likely to -

- "(a) result in Dorset Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates namely where the sum involved would exceed £500,000; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in Dorset."

How to complete this pro forma:-

- (1) The date of the decision.
- (2) A brief description of the decision.
- (3) The reasons for the decision.
- (4) Officer title.
- (5) Details of any alternative options considered and rejected by the officer when making he decision.
- (6) Any conflict of interest declared by any member who had been consulted by the officer which relates to the decision.
- (7) Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

N.B Please avoid using acronyms

Report to the Executive Director for Place

Definitive Map Modification Order Application to add a footpath along the River Yeo, Bradford Abbas

For Decision

Cabinet Member:	Cllr S Bartlett, Planning and Emergency Planning
Local Councillor(s):	Cllr Robin Legg
Senior Leadership Team:	Jan Britton, Executive Director for Place
Report author and job title:	Andy Hughes, Definitive Map Technical Officer
Email:	andy.hughes@dorsetcouncil.gov.uk
Statutory Authority:	Highways Act 1980, Wildlife and Countryside Act 1981

Report Status: Public

Executive Summary:

This report considers an application for a Definitive Map Modification Order, based on user evidence, to add a footpath to the Definitive Map and Statement in Bradford Abbas Parish. Following an investigation of the evidence, a recommendation is made to accept the application and make an Order.

Recommendation:

That:

- (a) The application be accepted, and an order made to modify the definitive map and statement of rights of way by adding a footpath from Footpath 3, Bradford Abbas south south east along the River Yeo and east to rejoin Footpath 3, Bradford Abbas as shown A-B-C-D-E on Drawing T725/24/1; 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 claimed right of way subsists or is reasonably alleged to subsist; and
- (b) The evidence shows, on balance, that the route claimed should be recorded as a footpath as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

The Report

1 Background

Applicant

- 1.1. An application to record a footpath as shown A-B-C-D-E on Drawing T725/24/1 (Appendix 1) was made by Bradford Abbas Parish Council on 9 September 2022.

Description of the route

- 1.2. The route claimed commences from Footpath 3, Bradford Abbas, at the south western corner of 'The Grange' (point A) then south for approximately 7 metres where it is currently blocked by a wire fence (point B), after the fence the route continues for approximately 73 metres along a grass surface towards the River Yeo (point C), south east following the river for approximately 96 metres then east for approximately 34 metres to rejoin Footpath 3, Bradford Abbas at the eastern corner of the field via a field gate (point E). The route has a grass surface throughout.

Background to the application

- 1.3. The landowner had submitted a Highways and Landowner Statement dated 7 June 2021 and Highways Declaration dated 8 June 2021 to Dorset Council on 18 June 2021, showing the Definitive Footpath 3, Bradford Abbas only.
- 1.4. This application was submitted in 2022 as a result of the landowner erecting a wire fence and a locked field gate blocking the route.
- 1.5. The application was accompanied by 56 user evidence forms.

Use of evidence

- 1.6. The applicant submitted user evidence in support of this application. No historic evidence has been found to date in support of this application.
- 1.7. A full consultation exercise was carried out during October to November 2024, which included landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding the application. The Councillor for the Ward; Cllr Robin Legg was also consulted. In addition, notices explaining the application were also erected on site. Relevant evidence provided is discussed in this report.

2 Law

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 (the Relevant Period) is counted back from when the right of the public to use the way is brought into question.
 - ‘As of right’ in this context means without force, without secrecy and without obtaining permission.
 - 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.
 - 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.
- 2.2 Section 31(3) of the Highways Act 1980 says that where a landowner 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.
- 2.3 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.

2.4 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality

2.5 Further details on the law are 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 claimed 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 and user 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.

3.4 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 even if they are not those claimed by the applicant.

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T725)

4.1 This claim is based mainly on user evidence. No documentary evidence was submitted with the application.

4.2 Aerial photographs have been examined, which show the existence of the claimed route on the ground dating back to 1997.

Ordnance Survey Maps

- 4.3 The claimed route does not appear on Ordnance Survey maps examined.

Estate maps

- 4.4 There are no available Estate Maps which show the claimed route.

Dorset Council Records

- 4.5 The Bradford Abbas Parish Survey (1951) for this area did not claim a right of way corresponding to the application route, nor was it shown on the Draft Map (1954), Provisional Map (1964), First Definitive Map (1966-67) Revised Draft Map (1974), or the most recently sealed Definitive Map (1989).

Aerial photographs

- 4.6 All available aerial photography held by Dorset Council for this site was examined. The path can be seen on the aerial photographs issued between 1997 – 2023, providing supporting evidence of the existence of the claimed route.
- 4.7 Officer comment: These photographs show the route as a walked line with a worn track evident, in the location as claimed.

Summary of documentary evidence

- 4.8 Aerial photographs are the only documentary evidence discovered which show that the claimed route has existed historically.

5 User evidence (Appendix 4)

Copies available in the case file RW/T725

- 5.1 Appendix 4 contains charts showing periods and level of use. Evidence submitted as part of the original application T725 in 2022 has been included in this analysis, as well as additional evidence provided as part of the public consultation on this path between 2 October 2024 to 15 November 2024.
- 5.2 56 User Evidence forms were submitted with the application for the claimed route in September 2022.

- 5.3 Of the 56 evidence forms 33 of the attached plans match the application route, 6 vary slightly from the application route and 17 maps vary significantly in at least part from the claimed route on the application plan. Evidence from the 23 witnesses whose maps vary from the claimed route has been excluded from the analysis.

Summary of user evidence

- 5.4 No other witness evidence statements were submitted following the consultation period.
- 5.5 Of the total 33 forms submitted matching the application route, the use of the claimed route spans a timeframe from 1958 through to 2021.
- 5.6 Of the 33 individuals 14 cover the full 20 year period prior to the fence and gate being erected in 2021 completely. A further 19 individuals used the route between 3 – 19 years within this 20 year period.
- 5.7 The witness evidence forms state the frequency of use varied from a couple of times a day to a couple of times a month.
- 5.8 The charts of use (Appendix 4) illustrate a continuous use 'As of Right' of the claimed route over the full 20 year period, by the 33 witnesses as a whole.
- 5.9 Of the 33 witness forms none state that they sought permission to use the route from the landowner or were turned back by the landowner.
- 5.10 One of the evidence forms includes photos showing signage stating "Private Land Keep to Footpath" this sign is shown at both access points to the land from Footpath 3. The photo also shows the land to be open and not fenced; this section of the document is dated 16 June 2020.
- 5.11 The same document also shows a clearly defined route on the ground consistent with the claimed route. This section of the document is dated 13 July 2020.
- 5.12 This document also shows the posts being erected for the fencing; this section is dated 06 May 2021.
- 5.13 Officer comment: On balance, taking into consideration the witness evidence from the application T725, it would suggest that use was 'As of Right' from 1958 and was free and open to the public at large until a gate and fencing was erected in 2021.

6 Landowner correspondence (copies available in the case file RW/T725)

- 6.1 The Landowner completed a Landowner Evidence Statement in November 2024. The Landowner acquired the land in December 2019.
- 6.2 The form states that they were not aware that the claimed route was public.
- 6.3 They have witnessed people using the route between 2020 – 2021 and that the use was rare.
- 6.4 They informed the Parish Council in 2020 that the land was private, but they would consider access for events such as the village duck race.
- 6.5 They submitted a Statement under Sec 31(6) of the Highways Act 1980 dated 7 June 2021 followed by a Highways Declaration dated 8 June 2021.
- 6.6 In November 2024 the Landowner submitted their response to the consultation, in summary:
 - a) They have stopped and challenged people throughout 2020 – 2021 until they erected the fence.
 - b) Signs were erected in “early 2020” saying “Private Land Keep to Footpath”, these were “always destroyed/removed”.
 - c) Main gates were locked; pedestrian access was allowed for the existing footpath.
 - d) Fence was erected to keep people to the existing footpath.
 - e) The Landowner also supplied photos of the field in flood where a considerable amount of the field is under water along with a large section of the claimed route.
 - f) Also supplied were a selection of screenshots taken from Facebook posts regarding their proposal to the Parish Council of access to a small section of the field to access the river along with comments from users.
 - g) These comments also make mention of the land being used for parking and threats of harm to the Landowner.

- h) Many of the users mention “Gollops Ground” they believe that their land is not called Gollops Ground and therefore can be classed as using other land.
- i) Stating that a number of User Evidence forms do not cover a relevant amount of 20 years use to substantiate the claim. The matter that few forms mention daily/frequent usage.
- j) Taking the 56 forms as a whole making approx. 5% of the community at large this isn't strong evidence.

6.7 Officer comments:

- (a) Use of the claimed route by the public was clear enough for the Landowner to take steps to bring such use to an end.
- (b) The erection of signs has been noted by some witnesses. They also stated that they had not seen notices prior to 2019 when the landowner acquired the land.
- (c) Locked gates are mentioned by witnesses and would show the Landowner trying to prevent access to the claimed route. There is no suggestion the entry was forced at any point.
- (d) The fence was newly erected in 2021, witnesses make no mention of fencing prior to this date and some use dates back to 1958.
- (e) Rights of way (particularly on flood plains or near rivers) are partially or sometimes fully submerged for periods of time this does not create a break in public rights to them other than for safety. The claimed route's location would make flooding likely in bad weather being that the land is low lying compared to the river.
- (f) These screenshots show various discussions, and that the area is clearly popular by the public.
- (g) The land has been used for parking for larger events in the area. Threats need to be handled by the appropriate authorities.
- (h) Local names for areas can be confused over time, often if at some point land has been divided. The use of the name “Gollops Ground” is being used alongside a description of the claimed path. Witnesses have also supplied maps with the claimed route drawn on by them as the path used.
- (i) The amount of usage by individuals does not suggest a lack of use as of right by the public, the witness evidence covers 20 years prior to the fence being erected and goes much further back also with witnesses stating that the use was frequent enough for the wider public to believe the path was public.

(j) It is 5% of the community who completed a witness evidence form only and does not necessarily show that many more members of the public weren't also using the claimed route but for whatever reason did not complete a form.

7 Consultation responses and other correspondence (copies available in the case file RW/T725)

7.1 A small number of responses were made following the consultation.

7.2 A resident notes that the previous landowner (circa 1980s) was aware of public use of the claimed route and did not object. One use of the route was the use of the river for a duck race.

7.3 Officer comments: We were not able to clarify this with the previous owner and no documentary evidence of this appears to exist.

7.4 The local school supplied a statement that the grounds staff mowed the claimed route as an access to the school for in excess of 25 years.

7.5 Officer comments: The route described by the school does not completely follow the line of the claimed path, but it has been known that the cut route varied. Not enough it seems to cover the route claimed under this application.

7.6 A further resident stated that moving the path from its present location of the top of the field it would mean that when the river floods it would be impassable.

7.7 Officer comment: This resident believes that the application was to move the current recorded route of Footpath 3, Bradford Abbas. This is not the basis of this application.

7.8 Mrs Wardell on behalf of the Ramblers had no personal or group evidence regarding use of the route but supplied an extract of an aerial photograph taken in 2002 showing a defined route in a similar location to that of the claimed route.

7.9 A member of the Parish Council following on from a site meeting with interested parties, supplied photos disputing the comments made that the land is under water when the river floods, they show a low section of the field under water, but the rest of the claimed route is still visible and in theory useable.

7.10 They also dispute that the landowner cuts the area 4 or 5 times for hay they say that they are only aware of the landowner doing it once a year.

- 7.11 Officer comment: this was following on from a site visit where it was stated that the whole field is under water when the river floods.

8 Analysis of the evidence

- 8.1 There is evidence of public use of the claimed route since 1955 and the user evidence put forward supports the claim that the route has been dedicated as a public right of way. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.

8.2 Analysis of the evidence under Section 31, Highways Act 1980

For Section 31 of the Highways Act to give rise to a presumption of dedication, the following criteria must be satisfied:

- The physical nature of the path must be such as is capable of being a right of way at common law
- The use must be brought into question i.e. disputed or challenged in some way
- Use must have taken place without interruption for a period of 20 years immediately prior to the date the right was brought into question
- Use must be 'as of right' i.e. without force, without secrecy and without permission
- Use must be by the public at large
- There must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

Physical nature of the route

- 8.3 The route claimed is capable of being a public right of way at common law, given that it follows a well-defined route from a currently recorded definitive footpath along a riverbank and rejoins definitive Footpath 3, Bradford Abbas.
- 8.4 There is currently a definitive footpath within the same parcel of land which the claimed route joins at either end.
- 8.5 The access to the claimed route is currently prevented by wire stock fencing at the eastern end and by a locked field gate at the western end. The area was fenced off in 2021.

- 8.6 Witnesses have all stated that they used the route for the period of use stated on their witness forms, often more than once a day.

Bringing into question the right of the public to use the path

- 8.7 Filing a Statement, Map and Declaration under the Highways Act 1980, Section 31(6) is sufficient evidence to show that the landowner had no intention to dedicate.
- 8.8 A s.31(6) (Highways Act 1980) Statement and Declaration was deposited with Dorset Council in June 2021.
- 8.9 In 2021 a fence was erected, and a locked gate was installed. Signs were erected prior to this, in early 2020, stating the land to be private and to keep to the footpath.
- 8.10 Although there is some evidence that landowners have brought the public's attention to keep to the currently recorded definitive footpath, it was not until the fence and gates were erected that the public stopped accessing the claimed route.
- 8.11 'Private' signs do not always convey to users of the claimed routes that there are no public rights along the claimed routes. This terminology has been considered in the Courts of Law (see Appendix 2).
- 8.12 A sign saying 'Private Land Keep to Footpath', which was attached to a gate on Footpath 3 would not necessarily suggest to the public at large that the claimed route was not also a 'Footpath' and the sign was not just there to keep the public from using the whole field.
- 8.13 The user evidence submitted provides that the impression given to the members of the public by the 'Private' signage in place was not a challenge to their use of the route and the existing signage was therefore not '*sufficient to bring it home to the public*' that they should not be using the routes.
- 8.14 Only when the fencing and gates were installed on the claimed footpath did the public interpret this as a challenge to use.
- 8.15 The test to be applied to signs is what the objective reader would understand them to mean – not what the landowners are claiming the signs to mean.

8.16 Consequently, if the only notices/signs present on the land stated 'Private Land Keep to Footpath', and the public did not have to use force to enter the land (for instance by breaking a fence/padlock or cutting a wire fence), then case law has determined users cannot reasonably be expected to 'understand (what) the owner's intention' was as there was no specific Footpath described on the sign and it could be argued that the claimed route could be part of the mentioned 'Footpath' as the application route would create a continuous circular walk around the land.

8.17 Therefore, the date of 'bringing into question' is taken to be 2021.

Twenty years use without interruption

8.18 Based on analysis of the user evidence from the completed witness evidence forms it would appear that there has been no interruption to public use from 1955 until 2021. The 20 year relevant period is taken to be 2001 to 2021.

Without force, secrecy or permission

8.19 There is no evidence by the witnesses to suggest that the route has ever been used by force. Evidence has been presented to show that the claimed route was a part of an open field with no restrictions until the landowner erected fencing during 2021.

8.20 All the witness evidence (written and verbal) states that the route has always been available for use by the public and was restricted when the fence was erected in 2021.

8.21 There is no evidence to suggest that use of the route has ever been because of a landowner's permission.

Use by the public

8.22 Use must be of a volume that is capable of coming to the attention of the landowner, and should be public and not, for example, solely by the tenants or employees of a particular landowner or business.

8.23 Evidence has been submitted by 33 witnesses stating that use of the claimed route has continued from 1958 until 2021. These individuals have used the claimed route during each of the years of the defined relevant period (2001-2021). It is clear that these individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test.

- 8.24 The evidence submitted in support of the application indicates that the route was used freely by the public for many years and without challenge until 2021.

Conclusions under Section 31, Highways Act 1980

- 8.25 It is considered that the requirements of Section 31 have been satisfied in this case and that the public have been using the route 'as of right' for a full period of twenty years between 2001 and 2021.

Analysis of the evidence under common law

- 8.26 This matter can also be considered under common law, where it is the responsibility of the applicant to show that the owners were aware of, and acquiesced in, the use of the path by the public. The users must be able to show that it can be inferred from the conduct of the landowners that they had intended to dedicate the route as a public right of way of the type that has been applied for. This may be by an express act of dedication, or it may be implied by a sufficient period of public use without force, secrecy or permission and the acquiescence of those landowners in that use. This is needed to meet the two requirements for the dedication of a highway – that is dedication and public acceptance of that way by use. The length of time that is required to demonstrate sufficient user is not fixed under common law and depends on the facts of the case. The use must be obvious to the landowners, who may rebut any suggestion of a dedication by acts such as turning people back, putting up a physical barrier or erecting notices stating that the route is not a public right of way of the type being claimed.

Conclusions under common law

- 8.27 There is sufficient evidence from which a deemed dedication at common law can be inferred.
- 8.28 Previous landowners do not appear to have communicated to the public that the claimed route was not public.

9 Alternative options considered

- 10.1 None

11 Legal considerations

- 11.1 See paragraph 2 above.

12 Financial Implications

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

13 Natural environment, climate & ecology implications

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

14 Well-being and Health Implications

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

15 Other Implications

None

16 Risk Assessment

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

Current Risk: LOW

Residual Risk: LOW

17 Equalities

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

18 Conclusions

- 18.1 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. There is disagreement between the parties as to whether the test is met in this case, but on balance it is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 18.2 The aerial photography shows the existence of the entire claimed route from 1997 through to the aerial photos taken in 2020.

- 18.3 The user evidence indicates that the route has been in use since 1955 and more so in the last 30 years.
- 18.4 The user evidence in the form of witness statements confirms continuous use from 1955 through to the fence and locked gates being installed in 2021. During this time the landowner installed signs in 2020 and submitted a landowner deposit followed by a declaration in 2021.
- 18.5 The available evidence is also sufficient for a dedication at common law to be inferred.
- 18.6 Therefore, the recommendation is that an Order is made to add the claimed route to the Definitive Map and Statement as a Footpath.
- 18.7 If no objections are received to the Order, the Council may itself confirm the Order.
- 18.8 If objections are received to the Order, the Council must submit the application to the Planning Inspectorate, with the objections, for it to determine the outcome of the application.

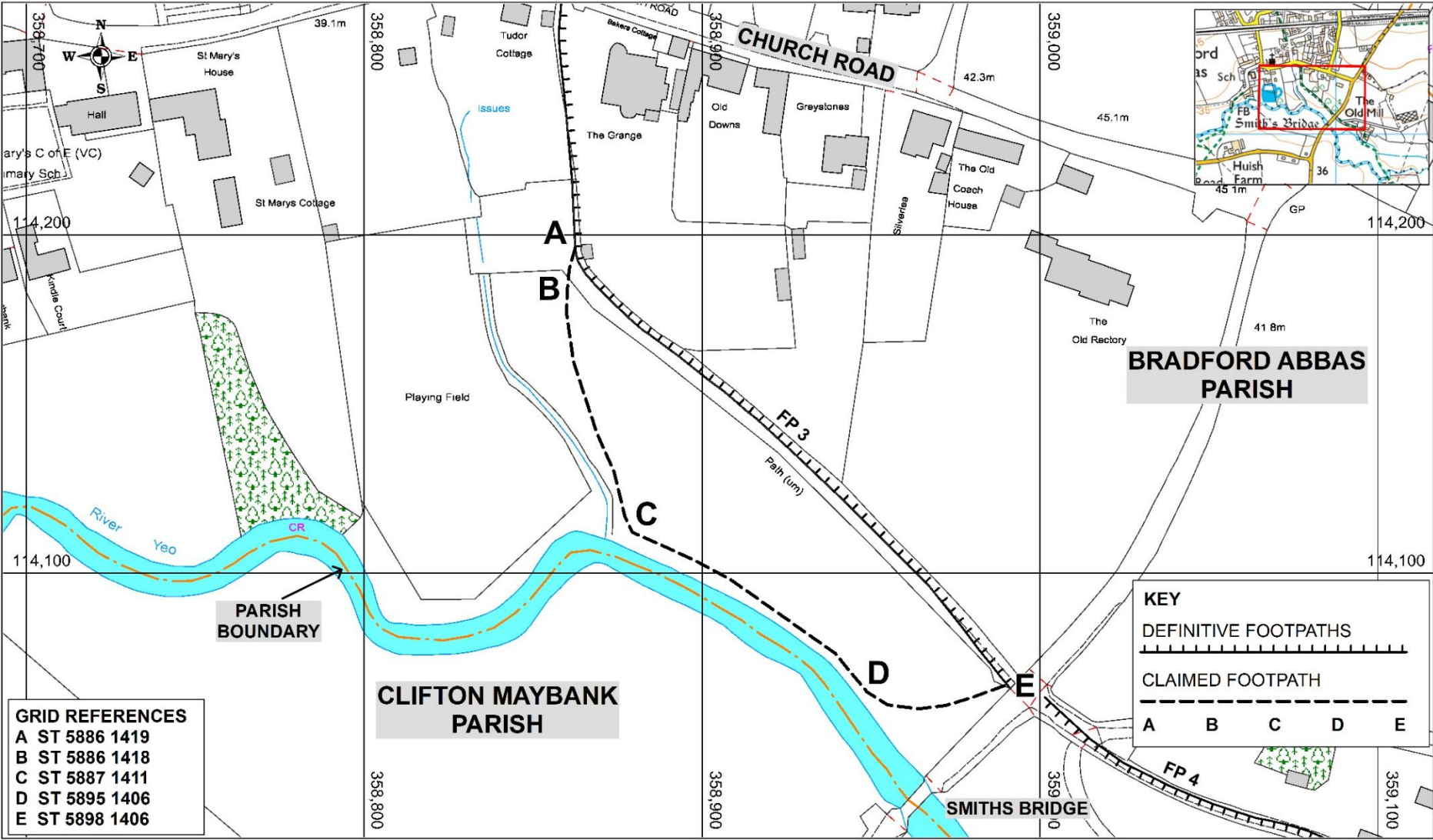
19 **Appendices**

- 1 Drawing T725/24/1
- 2 Law
- 3 Documentary evidence
 - Extracts from key documents:
 - 1997 Aerial photography
 - 2002 Aerial photography
 - 2009 Aerial photography
 - 2014 Aerial photography
 - 2021 Aerial photography
- 4 Charts to show periods and level of use

20 **Background Papers**

The file of the Executive Director, Place (ref. RW/T725).

Date: October 2025



WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION TO ADD A FOOTPATH FROM FOOTPATH 3, BRADFORD ABBAS, ALONG THE BANK OF THE RIVER YEO TO REJOIN FOOTPATH 3, BRADFORD ABBAS

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: T725/24/1

Date: 27/09/2024

Scale: 1:1500

Drawn by: AH

Cent X: 358,905

Cent Y: 114,145



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OS 0100060963. Aerial Photography ©
UK Perspectives 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).

4 Finance Act 1910

- 4.1 The Finance Act 1910 required the Commissioners of Inland Revenue to cause a valuation of "all land in the United Kingdom" and plans were prepared identifying the different areas of valuation. In arriving at these valuations certain deductions were allowed, including deductions for the existence of public rights of way.
- 4.2 Public 'fenced' roads were generally excluded from the valuation. Where public rights passed through, for example a large field and were unfenced, they would be included in the valuation and a deduction

would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

- 5.1 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.

6 **Case Law**

- 6.1 The Godmanchester case (2007) discussed deemed dedication. Lord Hope observed: *"Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way had been dedicated, and the owner has taken no steps to disabuse them of that belief."*
- 6.2 Officer comment: The user evidence submitted provides that the impression given to the members of the public by the ‘Private’ signage in place was not a challenge to their use of the route and the existing signage was therefore not *‘sufficient to bring it home to the public’* that they should not be using the routes
- 6.3 Officer comment: The test to be applied to signs is what the objective reader would understand them to mean – not what the landowners are claiming the signs to mean.
- 6.4 The matter of signage stating ‘Private’ has been considered in Winterburn v Bennett, 2016. In this case it was determined that a sign stating ‘Private’ was insufficient to relay to the user that there was no intention to dedicate the route for public use. The wording in the judgement in fact states the sign is not an ‘appropriate’ sign.

Documentary evidence considered

1997 Aerial photograph



2002 Aerial photograph



2005 Aerial photograph



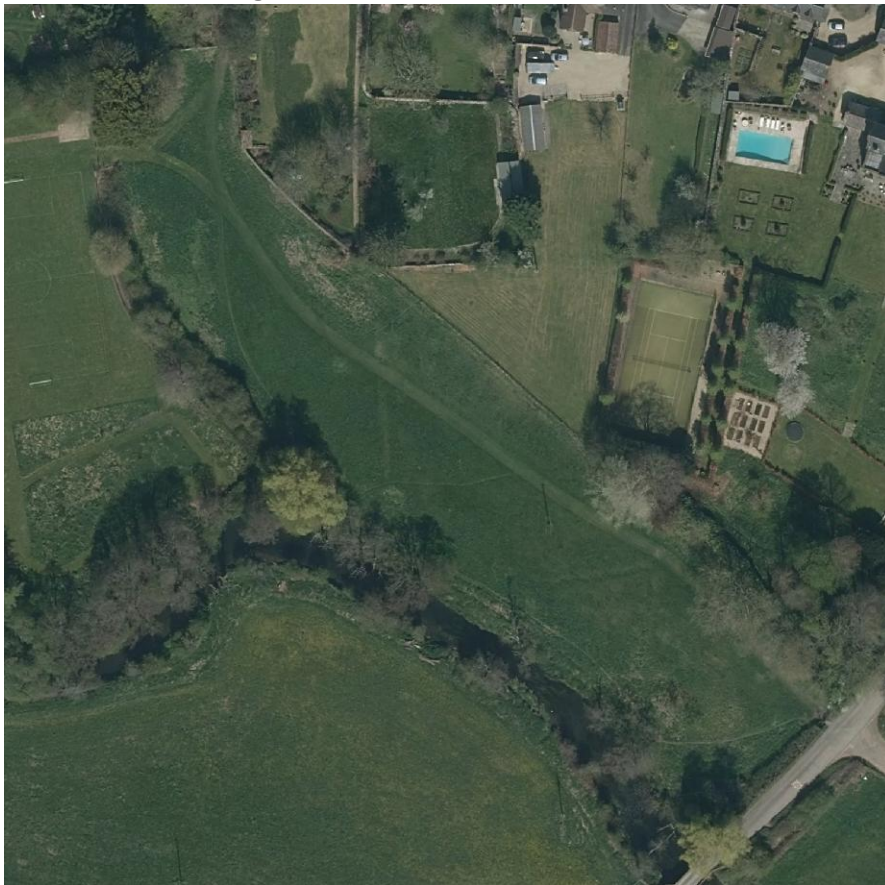
2009 Aerial photograph



2014 Aerial photograph

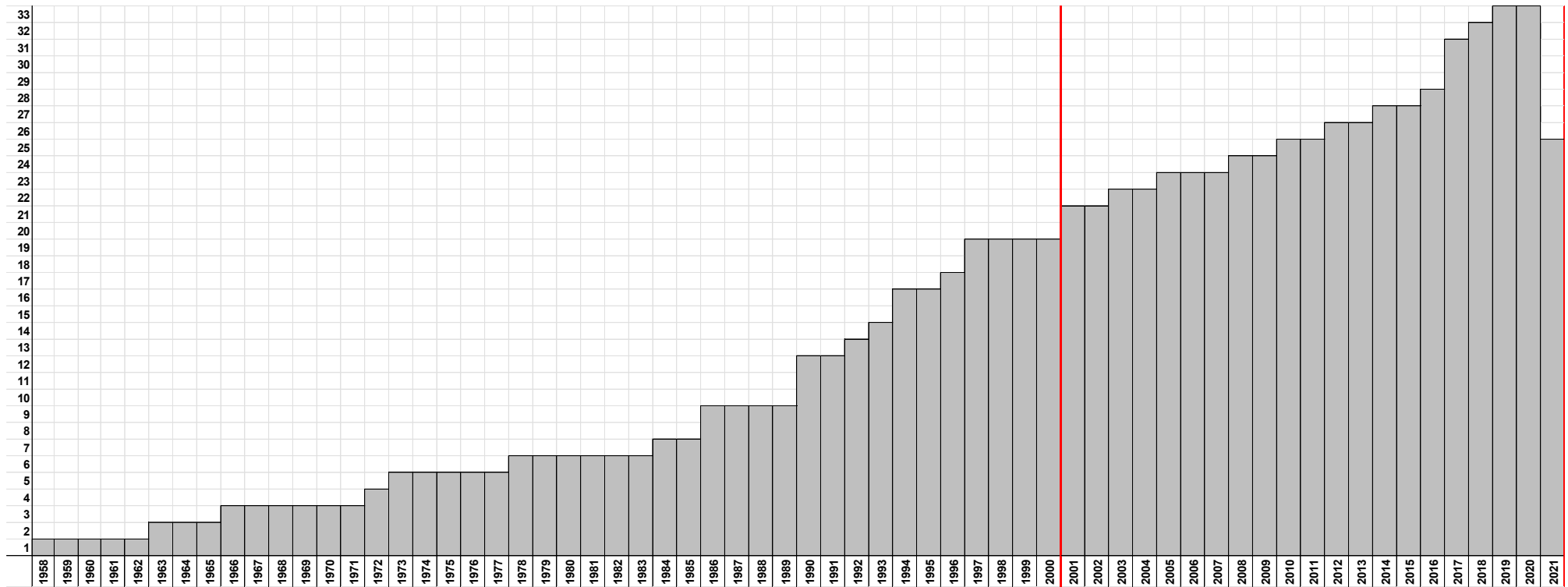


2021 Aerial photograph

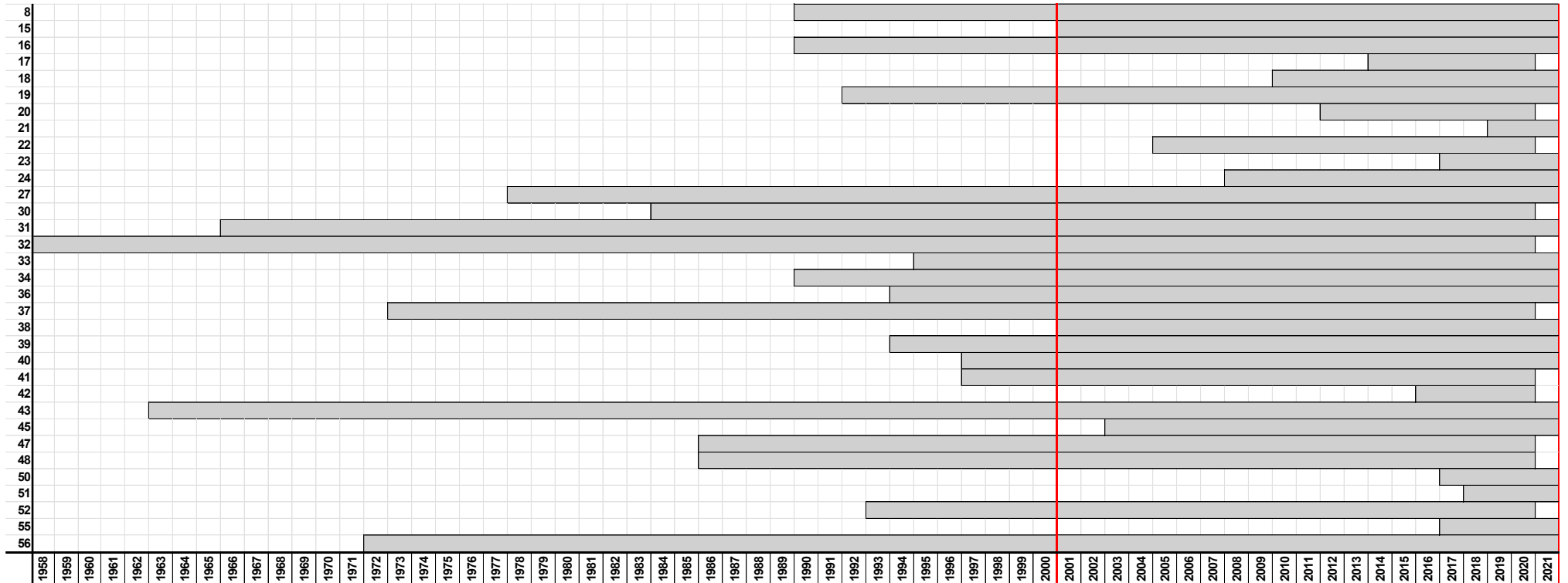


**NUMBER OF
USERS**

Chart to show level of use

**YEARS OF USE****20 YEAR PERIOD**

WITNESS NUMBER



YEARS USED ROUTE

20 YEAR PERIOD

Recommendations accepted:

Signed:

... .. Date:.....3 October 2025.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning

Authorised by the Executive Director for Place to sign on his behalf.