

## Report to the Executive Director for Place

# Definitive Map Modification Order Application to add a footpath from A348 Ringwood Road to meet Footpath 50 at Longham Lakes, Ferndown

## For Decision

<b>Cabinet Member:</b>	Cllr S Bartlett, Planning and Emergency Planning
<b>Local Councillor(s):</b>	Cllr Julie Robinson Cllr Hannah Hobbs-Chell
<b>Senior Leadership Team:</b>	Jan Britton, Executive Director of Place
<b>Report Author and job title:</b>	Sue Phillips, Definitive Map Technical Officer
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<b>Statutory Authority:</b>	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 Ferndown 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 A348 Ringwood Road, Ferndown west to join Footpath 50, Ferndown as shown A-A1-B-C on Drawing T794/25/2; 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- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.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.

**1 Background**

**Applicant**

- 1.1. An application to record a footpath as shown A-A1-B-C on Drawing T794/25/2 (Appendix 1) was made by Amanda Willis on 11 July 2024.

**Description of the route**

- 1.2. The route claimed commences at point A on a stone surfaced track off the A348 Ringwood Road, Ferndown then west to a 5-bar metal gate (point A1), continuing along a stone surfaced track where the route narrows (point B) and continues west along a grass surfaced track to join Footpath 50 (point C). The width varies from 4.5 metres at points A to A1, narrowing to 2.5 metres at point B and continuing at this width to point C where the route meets Footpath 50.

**Background to the application**

- 1.3. The application was submitted in 2024 as a result of a 5-bar metal gate being erected and locked across the route at point A1 in June 2024. A section of fencing was also erected abutting the gate post to extend the barrier. In addition, a piece of rope was strung across the route at point B with a notice advising “private property – keep out”.
- 1.4. The land across which the route runs is unregistered at Land Registry.
- 1.5. Schedule 14 Notices to inform unknown landowners of the Definitive Map Modification Order application were placed on site on 24 July 2025.
- 1.6. The application was accompanied by 47 user evidence forms.
- 1.7. The application is to add a footpath in the parish of Ferndown. Ferndown parish was known as Hampreston parish prior to Local Government Reorganisation in 1974.

## **Use of evidence**

- 1.8. The applicant submitted user evidence in support of this application.
- 1.9. A full consultation exercise was carried out from 26 November 2025 to 19 January 2026, which included affected landowners, user groups, local councils, those affected and anyone who had already contacted Dorset Council regarding the application. The Councillors for the Ward; Cllr Hannah Hobbs-Chelland and Cllr Julie Robinson were also consulted. In addition, notices explaining the application were 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/T794)**

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

4.2 During the course of the investigation, the following documents were examined in relation to the area of the claimed route.

### **Finance Act 1910**

- 4.3 The Finance Act 1910 plan show a track in the same position as the track along which the claimed route runs. The track was not assigned a hereditament and does not appear in the Field Valuation book. An uncoloured route on the Finance Act Plan without a hereditament suggests a road, lane or other route of access. A route excluded from the Valuation in this way is considered to be vested in the highway authority at this time and likely to indicate a route with public access of some description. The uncoloured route shows that a way along the claimed route existed at the time the Finance Act Plan was created. The Plan offers a small amount of weight towards evidence in support of the claimed route.

### **Ordnance Survey Maps**

- 4.4 The Ordnance Survey map of 1928 shows the feature of a track along which the claimed route runs. See Appendix 3.
- 4.5 Officer Comment: Historic and current Ordnance Survey maps show a feature of a track along which the claimed route runs, demonstrating a physical route which is visible on the ground. This does not add weight to the existence of public rights along the claimed route.

### **Dorset Council Records**

- 4.6 The Parish Survey (1951) for this area did not claim a right of way corresponding to the application route, nor was the application route 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). Each of these maps show nearby Footpath 2 which was stopped up in 1996. At the same time a Creation Order recorded Footpath 50 in its current location. See Appendix 3 for extract of current Definitive Map (1989).

### **Land Registry**

- 4.7 The application route as shown from points A to A1 to B to C is currently unregistered. The lack of registration does not preclude or negate any public rights over the land. The land registry documents do not add any weight to the evidence of the route being claimed.

### **Aerial photographs**

- 4.8 All available aerial photography held by Dorset Council for this site was examined. The track, along which the application route runs, can be

seen in aerial photographs since 1947, providing supporting evidence of the existence of the claimed route on the ground.

- 4.9 Officer comment: These photographs consistently show the claimed route as a track feature in the location as claimed.
- 4.10 Officer comment: Aerial photography from 2005, 2009 and 2026 show the evolution of the immediate area to the claimed route, where the exhausted gravel extraction site to the west of the claimed route was developed into the area now known as Longham Lakes. See Appendix 3. Longham Lakes was officially opened in 2010 and promoted as a recreational venue and haven for wildlife. The site is open for walkers and sports and hobby clubs such as canoeing, wildlife spotting and fishing.
- 4.11 Officer Comment: Aerial photography from 2009 also shows the emergence of residential developments immediately to the east of the claimed route, on the eastern side of the A348 from which the claimed route starts.

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

- 4.12 The Finance Act Plan (1910) is suggestive of public rights over the application route although the status of any rights is unclear. The Finance Act Plan adds some weight to the application but it is not conclusive.
- 4.13 The Ordnance Survey Map (1928) shows a feature of a track from Points A – A1 - B – C, which is confirmed in the aerial photographs from 1947 onwards.
- 4.14 The documentary evidence adds weight to the existence of the claimed application route, but no evidence is conclusive as to public rights or status of those rights.

#### **5 User evidence (Appendix 4) (Copies available in the case file RW/T794)**

- 5.1 Appendix 4 contains charts showing periods and level of use. Evidence submitted as part of the original application T794 in 2024 has been included in this analysis.
- 5.2 47 User Witness Evidence forms were submitted with the application for the claimed route in July 2024.

- 5.3 Of the 47 user evidence forms, all attached a plan to match the application route.
- 5.4 Officer Comment: All 47 user evidence form plans had been produced prior to the witnesses signing the forms with a prescribed digital line for the claimed route. All 47 users were approached by the applicant and requested to independently draw a route, free hand, on a blank plan to identify the route they walked. Each person was asked to sign and date their individual plan.
- 5.5 Officer Comment: Of the 47 plans, 42 were returned, all with free hand drawn plans which were signed and dated. The user evidence for the five individuals that did not re-submit a plan was excluded from the analysis.
- 5.6 No other witness evidence statements were submitted during or following the consultation period.
- 5.7 Officer Comment: Excluding five of the user evidence forms left a total of 42 users evidence to be analysed.
- 5.8 Of the 42 admissible forms submitted, all matched the claimed route and the use of the claimed route spans a timeframe from 1964 through to 2024.
- 5.9 Use of the route was brought into question in 2024, when a 5 bar metal gate was erected across the claimed route and padlocked. In addition, a section of fencing was erected to extend the barrier from the gate post to the boundary of the track. This results in a relevant period from 2004 – 2024.
- 5.10 Of the 42 individuals, 13 cover the full 20 year relevant period prior to the locked gate and fencing being erected in 2024. A further 30 individuals used the route between 4 – 18 years within this 20 year period.
- 5.11 The earliest recorded use of the claimed route was the year 1964 with this user claiming continual use of the route up to and including the year 2010, 6 years into the start of the relevant period. A further user claims continual use of the route from the years 1972 to 2024 and two more users claim continual use from 1979 to 2024, the year public use of the route was brought into question. Several more users claim their use of the route started during the 1980's and continued without interruption up to and including the whole of the relevant period.

- 5.12 In the relevant 20 year period, 2004 to 2024, the number of users increased from 13 in the years 2004 and 2005 to a maximum of 41 in each year from 2020 to 2024.
- 5.13 Officer Comment: There was a significant increase in the number of users from 2010, when the number rose from 16 to 21 in 2010. The number of users continued to steadily increase to the maximum user number of 41, in 2024.
- 5.14 Officer Comment: The increase in user numbers coincides with the official opening, in 2010, of Longham Lakes as a recreational facility for the general public. In the same year, a second residential development, immediately to the east of the claimed route on the eastern side of the A348, was completed with an earlier development being completed in 2009.
- 5.15 37 of the 42 individual witness evidence forms state the frequency of use varied from daily to weekly. Five of the 42 individuals claim use every month or every few months.
- 5.16 Officer Comment: The frequency of use of the claimed route demonstrates a high level of use during the relevant period with the lowest levels of use occurring in the years 2004 and 2005 of approximately 1,792 uses per year (an average of 34 uses per week) with maximum levels of use occurring in the years 2020 to 2024 of 5,111 uses per year (an average of 98 uses per week).
- 5.17 Of the 42 witness forms, all but one state seeing other users on the claimed route, with additional comments such as *“lots of people use it...we always see someone on it when we use it”* and, *“regular walkers or dog walkers”* and, *“I have passed other walkers going to enjoy the lakes or returning from them”* and, *“the path is used widely, I pass other users on a daily basis”*.
- 5.18 Of the 42 witness forms, 18 individuals made reference to a gate on the claimed route.
- 5.19 Officer Comment: To clarify the location and type of gate, contact was made with 15 of the 18 witnesses (three were unavailable for interview) who each confirmed the gate referred to was a *“kissing”*, *“swing”* or *“turnstile”* gate giving access on to Longham Lakes site and it was not locked. All individuals confirmed this gate is not on the claimed route but lies to the west of point C giving access to Longham Lakes from the western side of Footpath 50. This is an unlocked wooden swing gate. See Appendix 3.

- 5.20 Officer Comment: During the course of discussing the location of the gate, further information on use and knowledge of the route was offered, as follows: *“there were no obstructions on the track going to the lakes”,* and *“there is now a galvanised gate at Ringwood Road entry point and a rope further along the path with a private sign on it. Before this there were no gates on the route at all”* and *“we used to clear the path from Longham Lakes up to the point where the rope has been hung with the metal sign saying ‘private’”*.
- 5.21 Prior to the development of the area now known as Longham Lakes, the land was agricultural fields crossed by recorded public Footpath 2 which passed to the west of the track along which the claimed route runs. In 1996, Footpath 2 was stopped up to accommodate a gravel extraction site and a creation Order made for Footpath 50, which meets the end of the track along which the claimed route runs. The development of Longham Lakes reservoir and recreation site arose from the disused gravel extraction site with several points of access onto the site from Footpath 50.
- 5.22 Officer Comment: Three witnesses who claim use of the route for in excess of the relevant 20 year period state their use of the claimed route was initially influenced by their children attending a local primary school and record the following statements *“we walked our children to Hampreston School along the track and footpath before the lakes were built”* and *“we used the track to walk our children to school at Hampreston”*.
- 5.23 All 42 witnesses claim use of the route on foot with one user stating use of the route by pedal bicycle once a year and another using a pedal bicycle every few months.
- 5.24 Officer Comment: The number of user and frequency of use on a pedal bicycle does not support a status for bridleway or restricted byway for the claimed route.
- 5.25 The chart of use (Appendix 4) illustrates a continuous use ‘As of Right’ of the claimed route over the full 20 year period.
- 5.26 Of the 42 witness forms, none state that they sought permission or were given permission to use the route.

### **Summary of user evidence**

5.27 On balance, taking into consideration the witness evidence from the application T794, it would suggest that use was 'As of Right' from 1964 and was free and open to the public at large until a gate and fencing were erected at Point A1, and a rope was hung with a "private property – keep out" sign attached, across the claimed route at Point B, which blocked the route in 2024.

### **6 Landowner correspondence** (copies available in the case file RW/T794)

6.1 Two responses were received from landowners during the consultation. The two landowners are registered owners of property the access to which is via the unregistered track, along which the claimed route runs.

6.2 One affected landowner stated:

*"The track is actively used for livestock, a commercial yard and normal residential access, which is why a gate was reinstated, reflecting what had been in place many years ago by the original farmer. Unfortunately that gate was broken and wasn't replaced at the time as it was unnecessary.*

*Since Covid, many members of the public began using the track unofficially and this has led to numerous of near miss accidents, including people running in front of vehicles/lorries and machinery. Livestock has been let out, dogs running loose, children running up the track unattended, fly-tipping and frequent antisocial behaviour, including condoms being discarded most weekends. These issues clearly demonstrate that public access is unsafe and unsuitable for this location.*

*There are already two well established public access points from Ringwood Road to the lakes: the main entrance used by SWW, and the existing public right of way located next to the Aston Martin garage. These routes provide safe and suitable access for the public. Introducing an additional public right of way along this track would offer no meaningful benefit and would instead create further safety concerns for both residents, livestock and the public."*

6.3 A second affected landowner stated:

*“As per the title deeds the property of.....is subject to a right of way over a strip of land three feet wide along the western boundary for the purposes of gaining access to and egress from the two cottages.....the owner of the property has had the benefit of a right of way on foot and with vehicles without the consent of any person without interruption and without payment of any kind for use.”*

### **Summary of Landowner correspondence**

- 6.4 Land with shared access and purpose, i.e. vehicular and pedestrian rights does not influence the existence of public rights. Private rights of access to properties are not affected by the existence of public rights of way.
- 6.5 The incidents highlighted in the correspondence regarding experiences with vehicles, livestock, children and dogs illustrate use being made of the claimed route by the public.
- 6.6 Concerns regarding safety, security and suitability cannot be taken into consideration when determining whether or not public rights exist. However, such matters can be addressed if public rights are ultimately recorded.

### **7 Consultation responses and other correspondence** (copies available in the case file RW/T794)

- 7.1 A small number of responses were made during the consultation.
- 7.2 East Dorset Ramblers offered their support for the claimed route and stated, *“we have made use of this route regularly over the past 10 years”*.
- 7.3 A local resident wrote *“having been a resident here for 28 years, the track did not originally have access to Longham Lakes nor is it registered as a footpath. Access for the track was for the two fields, yard and residential parking adjoining it.*

*However, the track gave access to the lakes when Sembcorp put up a gate after residents pulled the fence down to gain access to the lakes even though there were already 3 access areas in place....we phoned Sembcorp to ask them to move the gate....but disappointingly nothing happened.*

*Which in fairness has caused no end of problems with anti-social behaviour and parking problems. Not to mention if we need the emergency services access was being blocked by non-residential users who were using it as a car park.*

*I personally have no problem with people using it as a footpath and never did and on foot only. And as like any other footpath, it should have no parking rights.”*

## **Summary of Consultation Responses**

- 7.4 The Ramblers are in support of the claimed route and have made use of it. The second respondent objects to non-residents parking vehicles on the claimed route but supports a footpath without vehicular access.

## **8 Analysis of the evidence**

- 8.1 There is evidence of public use of the claimed route since 1964 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 track, to join with Footpath 50, Ferndown.
- 8.4 There is currently a definitive footpath at the junction with the claimed route.
- 8.5 The access to the claimed route is currently prevented by a locked 5 bar metal gate and a section of fencing abutting the gate post to the track edge. The gate and fencing were erected in 2024.
- 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 of a Deposit of Statement and Map under the Highways Act 1980, Section 31(6) is sufficient evidence to show that the landowner had no intention to dedicate.
- 8.8 At the time of writing this report, no s.31(6) (Highways Act 1980) Statement and Declaration has been deposited with Dorset Council for the land over which the claimed route runs.
- 8.9 In 2024 a locked gate was installed with a section of fencing abutting the gate to extend the barrier across the claimed route. At point B of the claimed route, a piece of rope was strung across the claimed route with a sign saying 'Private property – keep out'. The remaining section of the route from point B to C remains available.
- 8.10 Only when the locked gate and abutting fencing were installed at point A1 and a piece of rope with a sign stating 'Private property – keep out' attached to the rope at point B, on the claimed footpath did the public interpret this as a challenge to use.

### **Twenty years use without interruption**

- 8.11 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 1964 until 2024. The 20 year relevant period is taken to be from 2004 to 2024.

**Without force, secrecy or permission**

- 8.12 There is no evidence by the witnesses to suggest that the route has ever been used by force.
- 8.13 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 gate and fencing was erected at point A1 and a piece of rope strung across the route at point B advising the area was “private property – keep out” in 2024.
- 8.14 There is no evidence to suggest that use of the route has ever been because of a landowner’s permission.

**Use by the public**

- 8.15 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.
- 8.16 Evidence has been submitted by 47 witnesses, 42 of whose evidence was included in analysis, stating that use of the claimed route has continued from 1964 until 2024. These users also used the claimed route during the years of the defined relevant period (2004-2024). These individuals comprise ‘the wider public’. Their combined use over the 20 year period satisfies the legal test.
- 8.17 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 2024.

**Conclusions under Section 31, Highways Act 1980**

- 8.18 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 2004 and 2024.

### **Analysis of the evidence under common law**

- 8.19 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**

- 8.20 There is sufficient evidence from which a deemed dedication at common law can be inferred.
- 8.21 The land over which the claimed route runs is unregistered and any previous or current individuals laying claim to ownership, do not appear to have communicated to the public that the claimed route was not public.
- 8.22 Officer Comment: Where there is no known landowner of the route an inferred dedication at common law may not be possible if the land is held in certain types of settlement. As no landowner has come forward, there is no evidence to suggest this is the case here. As such a dedication at common law can be inferred.

## **9 Conclusions**

- 9.1 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, on balance it is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 9.2 The aerial photography shows the existence of the entire claimed route from 1947 through to the aerial photos taken in 2026.

- 9.3 The user evidence indicates that the route has been in use since 1964 with levels of use increasing significantly during the relevant period.
- 9.4 The user evidence in the form of witness statements confirms continuous use from 1964 through to 2024.
- 9.5 No landowner of the unregistered land has made themselves known during the course of the investigation. One of the affected owners of adjacent land, who uses the unregistered track to access their land, erected the gate and fencing.
- 9.6 The available evidence is also sufficient for a dedication at common law to be inferred.
- 9.7 Therefore, the recommendation is that an Order is made to add the claimed route to the Definitive Map and Statement as a Footpath.
- 9.8 If no objections are received to the Order, the Council may itself confirm the Order.
- 9.9 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.

## **10 Alternative options considered**

- 10.1 None.

## **11 Legal Considerations**

- 11.1 See paragraph 2 above

## **12 Financial Implications**

- 12.1 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**

- 13.1 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**

- 14.1 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**

- 15.1 None

## **16 Risk Assessment**

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

Current Risk: LOW

Residual Risk: LOW

## **17 Equalities**

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

## **18 Appendices**

- 1 Drawing T794/25/2

- 2 Law

- 3 Documentary evidence - Extracts from key documents:

- Finance Act Plan (1910)
- Ordnance Survey Map (1928)
- Extract of Current Definitive Map (1989)
- 1972 Aerial photography
- 1997 Aerial photography
- 2005 Aerial photography
- 2009 Aerial photography
- 2015 Aerial photography
- 2026 Aerial photography

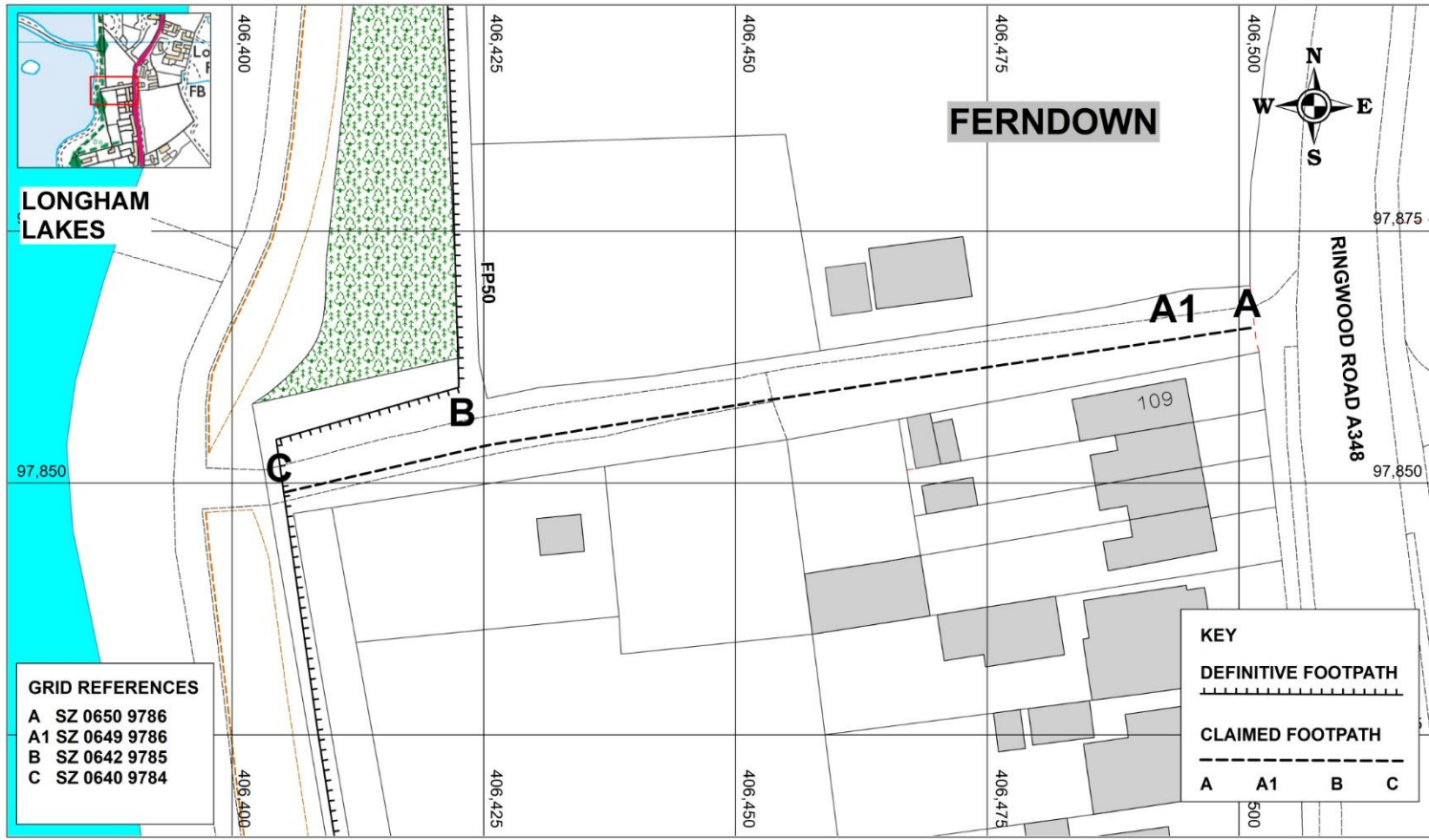
4 Charts to show periods and level of use

19 **Background Papers**

The file of the Executive Director, Place (ref. RW/T794).

**Date: March 2026**

**APPENDIX 1**



<p><b>WILDLIFE AND COUNTRYSIDE ACT 1981</b> APPLICATION TO ADD A FOOTPATH FROM RINGWOOD ROAD (A348) TO FOOTPATH 50, FERNDOWN</p> <p>THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS</p>	<p>Ref: T794/25/2 Date: 27/03/2026 Scale : 1:500 at A4 Drawn By: SP Cent X: 406,448 Cent Y: 97,856</p>	 <p>© Crown copyright and database rights 2026 OS 0100060963. Aerial Photography © UKPerspectives 2002 &amp; © Getmapping 2005, 2009 &amp; 2014, © Getmapping Plc and Bluesky International Limited (2017 onwards)</p>
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## LAW

<b>APPENDIX 2</b>
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### 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

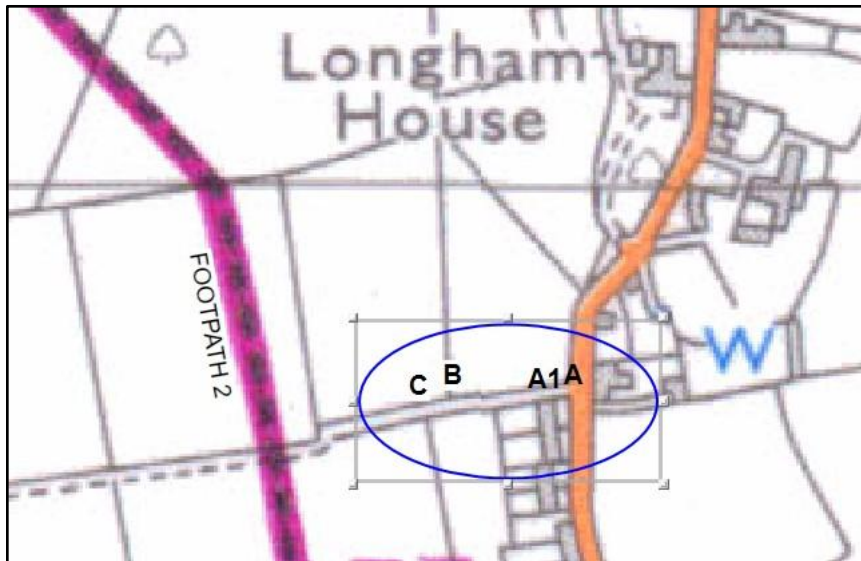
deduction would be made in respect of the public right of way.

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.



**Current Definitive Map (1989)**



**Aerial Photography**

**1972 Aerial photograph**



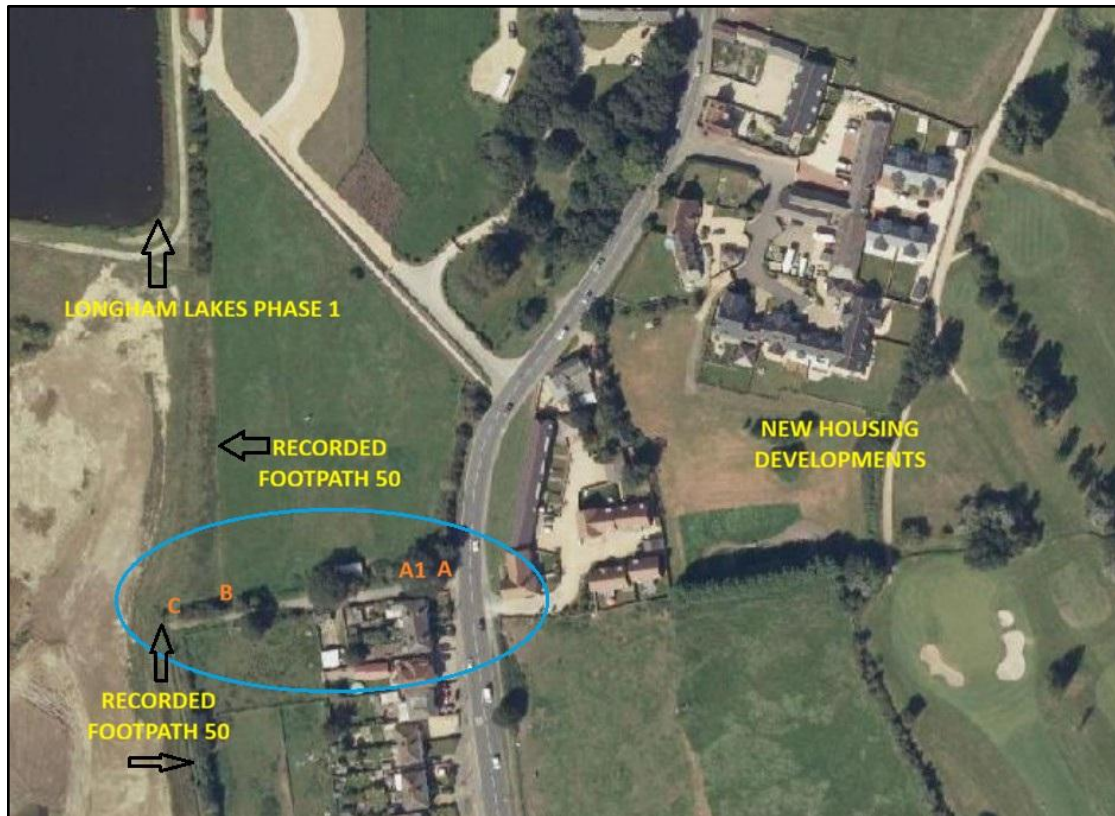
**1997 Aerial photograph**



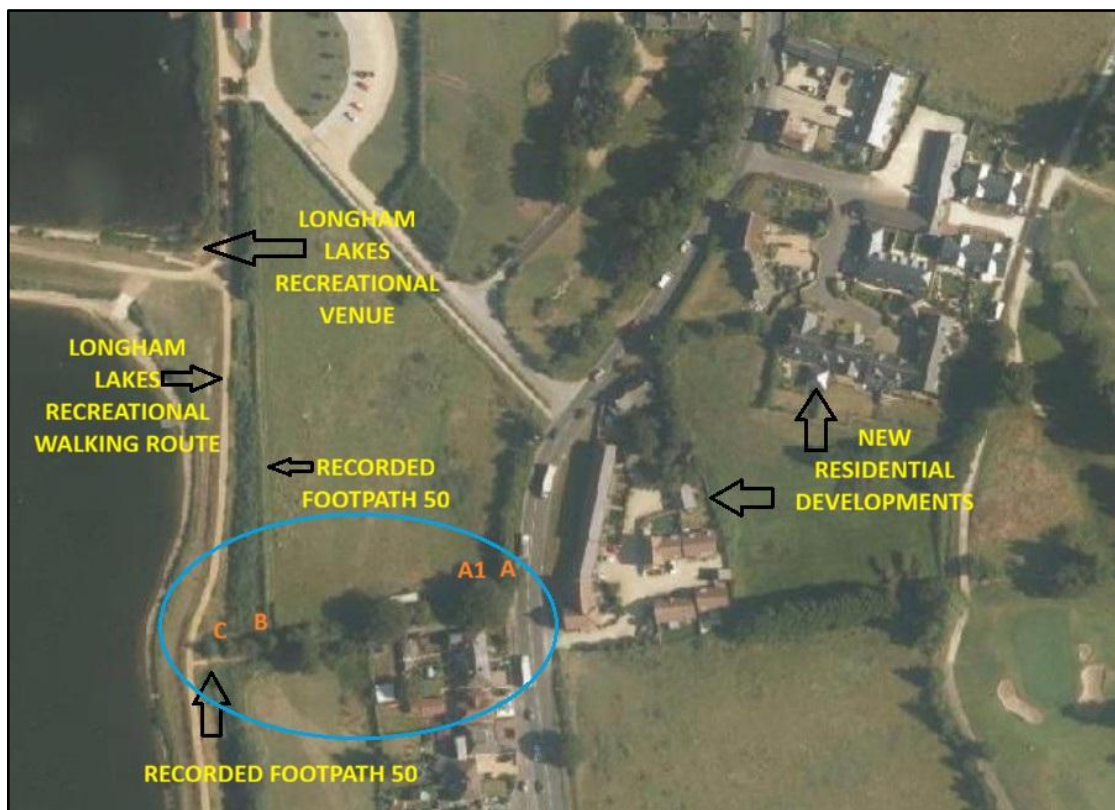
**2005 Aerial photograph**



**2009 Aerial photograph**



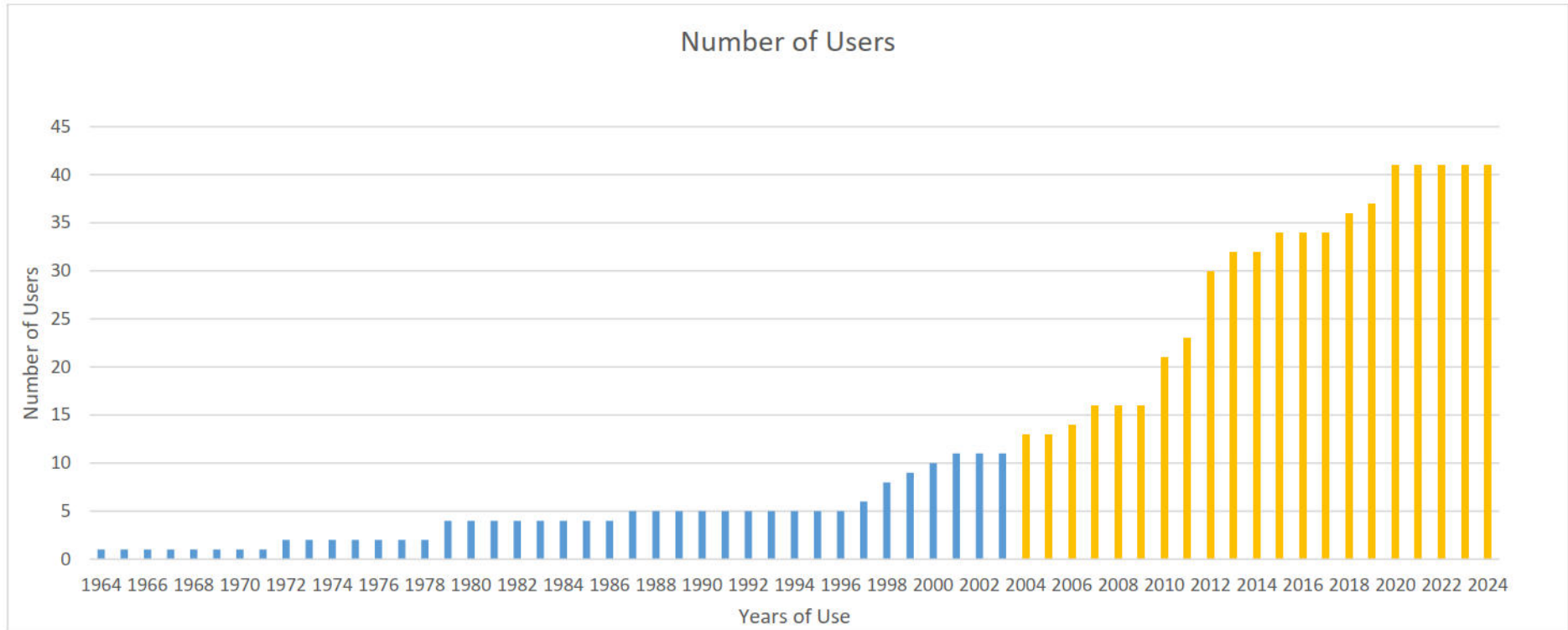
**2015 Aerial photograph**



**2026 Aerial photograph**

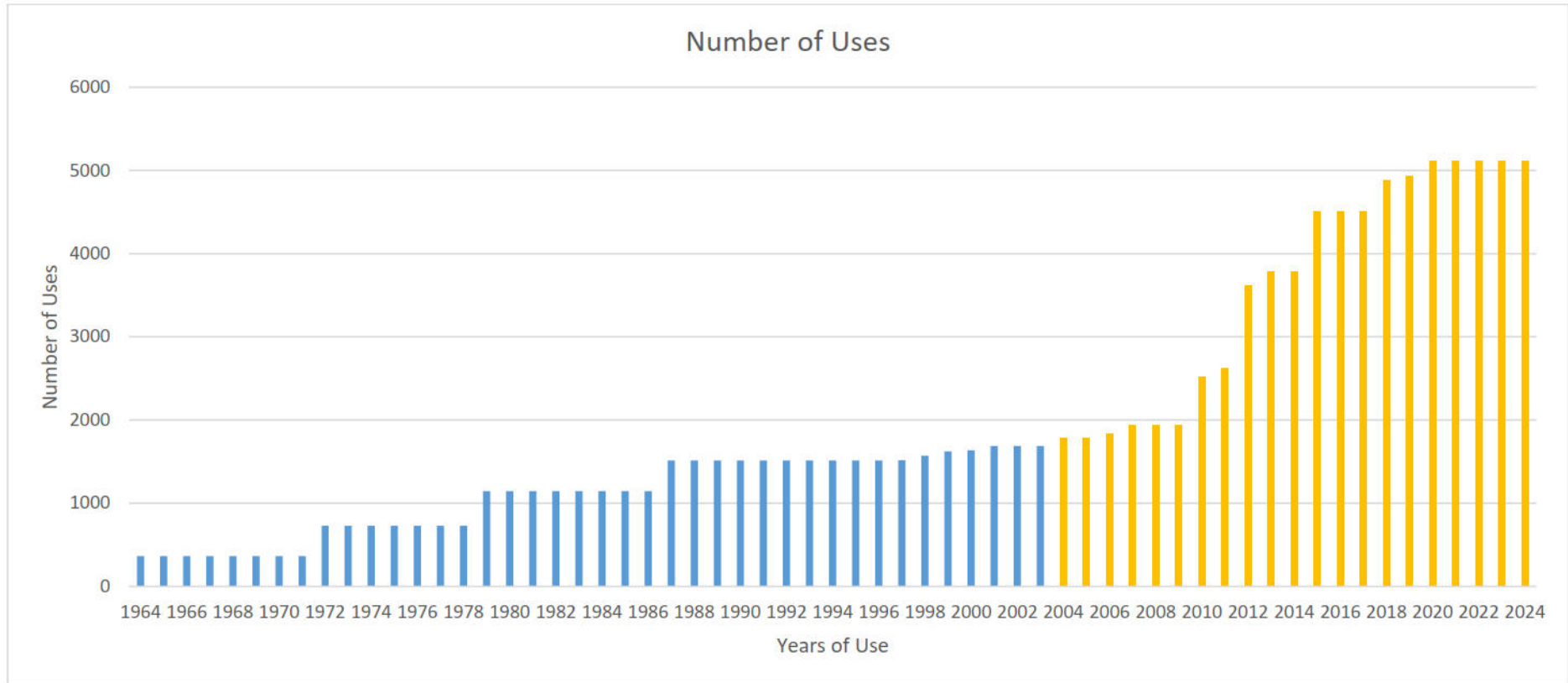


**Chart to show level of use**



**20 YEAR PERIOD**

**Chart to show frequency of use**



**20 YEAR PERIOD**



**Recommendations accepted:**

**Signed:**

.. **REDACTED**

Date:.....2 April 2026.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning

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