

Agenda item:

Regulatory Committee



Dorset County Council



Date of meeting	18 December 2014
Officer	Director for Environment and the Economy
Subject of report	Proposed definitive map and statement modification order - Footpath 111, Marnhull
Executive summary	This report considers modifying the definitive map and statement of rights of way to correct the recorded route of Footpath 111, Marnhull between Mill Lane and Musbury Lane.
Impact Assessment:	Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this proposal.
	Use of Evidence: Documentary evidence has been researched from the Dorset History Centre and the County Council's rights of way files from the 1950s onwards. A full consultation exercise was carried out in January 2014, involving landowners, user groups, local councils, those affected and anyone who had already contacted Dorset County Council regarding this proposal. Any relevant evidence provided has been discussed in this report.
	Budget: Any financial implications arising from this proposed modification are not material considerations and should not be taken into account in determining the matter.
	Risk Assessment: As the subject matter of this report is the determination of a definitive map modification order application the County Council's approved Risk Assessment Methodology has not been applied.

Recommendations	<p>That:</p> <p>(a) An order be published to modify the definitive map and statement of rights of way to correct the route of Footpath 111, Marnhull from the recorded route as shown A – B to that shown C – F – D – E on Drawing 14/04/1 (Appendix 1); and</p>
	<p>(b) If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.</p>
Reasons for Recommendations	<p>(a) The available evidence shows, on balance, that the recorded route of Footpath 111, Marnhull requires modification as described.</p> <p>(b) The evidence shows, on balance, that the correct route of Footpath 111, Marnhull is as proposed. Accordingly, in the absence of objections the County Council can itself confirm the Order without submission to the Planning Inspectorate.</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public right of way comply with the legal requirements and achieves the corporate plan objectives of:</p> <p>Enabling Economic Growth</p> <ul style="list-style-type: none"> • Ensure good management of our environmental and historic assets and heritage <p>Health, Wellbeing and Safeguarding</p> <ul style="list-style-type: none"> • Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset • Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live • Enable people to live in safe, healthy and accessible environments and communities
Appendices	<p>1 - Drawing 14/04/1</p> <p>2 - Law</p> <p>3 - Documentary evidence</p> <ul style="list-style-type: none"> • Table of documentary evidence • Extracts from key documents <ul style="list-style-type: none"> ▪ 1972 Marnhull Parish Council claim sketch map ▪ 1886 First Edition Ordnance Survey map scale 1:10560 (enlarged) ▪ 1902 Second Edition Ordnance survey map scale 1:2500 ▪ 1974 Revised draft map (enlarged) ▪ 1989 Current definitive map (enlarged) <p>4 - User evidence from forms submitted in 1972</p> <ul style="list-style-type: none"> • Table of user evidence • Charts to show periods and level of use

Background Papers	The file of the Director for Environment and the Economy (ref. RW/T528).
Report Originator and Contact	Jane Cheeseman Rights of Way Technical Officer Tel: (01305) 221560 email: j.l.cheeseman@dorsetcc.gov.uk

1 Background

- 1.1 The anomaly was discovered as a result of a local Land Charges Search in 2010. Solicitors acting for the owners of Spring Cottage at the time were advised to make a definitive map modification order application in order to accelerate the investigation and to give them, as applicants, a right of appeal in case their application was refused.
- 1.2 In late 2013 the Senior Ranger for the area was made aware that the path was blocked from public use and asked for clarification regarding the recorded route.
- 1.3 As no application has been made and the issue is causing concern locally the County Council is carrying out its duty under Section 53 of the Wildlife and Countryside Act 1981 to keep the definitive map and statement under continuous review and investigate the matter to establish the correct route of Footpath 111.
- 1.4 The route currently shown on the definitive map at the scale of 1:25000 as running from Mill Lane north east to Musbury Lane is as represented A – B on Drawing 14/04/1 (Appendix 1). The line is to the north of the buildings shown on the definitive map, which appear to include Nos. 1 and 2 Ivers Cottages.
- 1.5 On the ground the definitive route does not exist. At point A from Mill Lane there is a bank with trees and at point B a similar bank with trees and a wooden fence. The route that has been in use has a narrow wooden gate at point A between Greenways and No. 2 Ivers Cottages, pedestrian gates at points F and D and a field gate near the exit onto Musbury Lane at point E.

2 Law

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

3 Evidence to be considered

Documentary evidence (Appendix 3) (copies available in the case file RW/T528)

- 3.1 A table of all the documentary evidence considered during this investigation is contained within Appendix 3. Extracts from the key documents are also attached.

4 User Evidence (Appendix 4) (copies available in the case file RW/T528)

- 4.1 As this case is not the subject of an application but is being investigated under the continuous review procedure, the user evidence is limited to that put forward at the time the path was claimed in 1972.
- 4.2 A table of user evidence summarised from the witness evidence forms together with charts showing their periods and level of use form Appendix 4. An analysis of the user evidence is contained at paragraph 7 of this report.

5 Additional evidence or representations in support of the proposal

- 5.1 One submission supporting the proposal was received in response to the consultation exercise.

Name	Comments
Mrs Jan Wardell, The Ramblers	She has spoken to several residents of Marnhull and says that, “to the best of their knowledge, the currently recorded route A-B has never been available for use on the ground.” In addition she attaches an extract from the 1984 map, which does not show the route at all but also an extract from the 1902 map at 1:10,560 that does show the route C-F-D-E. (Discussed at paragraph 8.17 below).

6 Evidence or representations against the proposal (copies available in the case file RW/T528)

- 6.1 Two submissions were received from residents either side of the proposed route in response to the consultation exercise.

Name	Comments
Jean and Peter McErlain 'Greenways'	<ul style="list-style-type: none"> On the 1902 OS map the footpath is shown north west of their property boundary and that of Spring cottage – not immediately adjacent the buildings. Around 1901 Ivers Cottages were built although these do not appear on the map. Note from the “1937 -1961 edition” [actually 1958] “that no footpath at all is shown... although all other footpaths are shown in detail. In 1974 a footpath was introduced running across the middle of the field north of Greenways and Spring Cottage. This was not objected to “by any of the supporters of the 1972 review”. Since they purchased Greenways in 2013 only one person has used the access to Mill Lane, whose use they tolerated. They understand from the current user of the field that no other person has used the field for the last five years. In 2010 the owners of Spring Cottage transferred their access to Mill lane in return for land south east of Greenways for a vehicular access drive. The letter from Dorset County Council to the Solicitors acknowledged the apparent inaccuracies in 1974 and 1989. They submit that the 1974 route “was not in fact a cartographic error but an attempt to reinstate the 1972 path in a position that took into account the building of 1 and 2 Ivers Cottages across the original line”. Suggests routing the path north of Nos 1 and 2 Ivers cottages.

Name	Comments
Clive Whitbourn and Lucy Evershed, 2 Ivers Cottages	<ul style="list-style-type: none"> • Since they moved there in 2003 the proposed modification has “never been used in that time”. A similar route “ceased to exist in 1902 when 1 and 2 Ivers Cottages were built”. • C-D was used only by the owners of Ivers Cottage/Spring Cottage. Around three years ago the owner of Greenways carried out a land swap and gave Spring cottage their own driveway and the route C-D “ceased to be used by the Ivers/Spring cottage residents”. • Not aware of use of the complete route proposed but a resident of Musbury Close has used the path between C-D as an “unauthorised access to and from the rear of their property”. • The wooden gate at point E “has for the most part been locked” for the past ten years. • Has been assured more than once by council staff that no right of way existed between C-D-E.

7 Other submissions received

7.1 Five other letters were received in response to the consultation.

Name	Comments
Shirley Blackford, local resident	No comments (apart from pointing out that the Ordnance Survey has shown some of the boundaries in the wrong place).
Carol Shoopman, British Horse Society	No objection.
Claire Pinder, Senior Archaeologist, Dorset county Council	“No recorded archaeological features on or in the immediate vicinity of the routes affected by this proposal.”
Southern Gas Networks	Presence of Low/Medium/Intermediate Pressure gas main in the proximity (under the roads).
BT Openreach	“BT apparatus should not be affected.”

8 Analysis of documentary evidence

8.1 The most important documents in this case are those relating to the Special Review of the definitive map, which started in 1972.

County Council records and mapping

- 8.2 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. The **1953 Marnhull Parish Survey map** at a scale of 1:10560 shows the path but it is uncoloured as it was not one of the paths claimed at this time.
- 8.3 The **draft map 1959, provisional map 1964** and the **first definitive map 1967** do not show Footpath 111.

Special Review

- 8.4 Correspondence from the **owner of Ivers Cottage** (now Spring cottage), Mr Moseley, in May 1972 alerted the County Council that there was a “gap in a footpath route which I would wish to see filled” between Footpath 3, on the other side of Mill Lane (near point C), and Footpaths 97 and 101 leading from Musbury Lane opposite point B.
- 8.5 Mr Mosely copied in the Parish Council and asked for confirmation that “the gap was left not as a deliberate decision to omit part of the route but because the footpath was not claimed at the time the sheet was prepared in draft form by the Parish”. He had “purchased property at Mill Lane,and [was] interested in securing the addition of the right of way which I believe to exist, linking the paths to which I have referred”.
- 8.6 The Parish Council confirmed by letter in June 1972 that the path “was not deliberately omitted from the footpath map”.
- 8.7 Mr Moseley wrote again in September 1972 asking if the Parish Council had made such a claim, adding “I would also be grateful to know what action you propose to take on any such request as part of such a link would pass over my land at Ivers Cottage”.
- 8.8 The **Parish Council** submitted their **claim** to the County Council on 27 September 1972.
- 8.9 They asked for assistance “in the removal of an **obstruction** on the path” that had occurred on 24 April. The obstruction report stated: “Stile wired up and top rail removed”. They recognised that the path was not on the definitive map and had not been claimed at the Review stage but acknowledged that there was “considerable evidence of use”.
- (a) The Parish Council enclosed a **sketch map** of the route (Appendix 3) showing the obstruction to be at approximately point F (Drawing 14/04/1). The hand drawn map clearly indicates that the start of the path on Mill Lane was at the “Gate to Ivers Cottage” – now Spring Cottage – at point C. It shows a red dashed line indicating the route of the path claimed. (The drawing is hand-drawn and the exit at point C appears to be further north west along Mill Lane than it actually is.)

- (b) The Parish Council also attached **six evidence forms** from users showing “uninterrupted use over many years”. Several mention a stile next to Ivers Cottage at the Mill Lane end (the stile mentioned in the obstruction report at point F) and steps on a gate at the Musbury Lane end.
- 8.10 The **Special Review Committee** considered the Parish Council’s claim on 11 September 1973 as part of the Special Review procedure. They decided that there was “Sufficient evidence of public user” and upheld the claim.
- 8.11 The County Council wrote to Mr Moseley to confirm that the Parish Council’s claim had been received and informed him that the Sub-Committee’s decisions would be made known when the revised draft map was published in early 1974.
- 8.12 The path was subsequently shown on the **revised draft map** in **1974** but is shown too far north, not on the line as claimed (see extract at Appendix 3). There were no objections to the path being shown on the revised draft map in 1974.

General correspondence

- 8.12.1 A letter on file dated 18 June 1979 from a firm of solicitors in connection with the purchase of Ivers Cottage asked for confirmation that there was a public footpath “leading from the cottage to Musberry Lane” and attached a plan showing the route C – F – D – E. A hand written note at the bottom of the letter states “Not on Definitive. FP 111 Revised Draft From Mill Lane 771198 to Musberry Lane 773198 marked on plan. Subject to inaccuracies of scale”.
- (a) The County Council’s response says that the revised draft map “shows footpath 111 running along the line indicated in pencil on your plan [C – F – D – E]The Parish Survey, from which the Revised draft Map was compiled, states that the path runs through an obstructed gate of Ivers Cottage”.

Current definitive map

- 8.13 Footpath 111 is also shown on the **current definitive map** sealed in **1989** but the error shown on the revised draft map was repeated and the line is too far north, as shown A – B on Drawing 14/04/1 (Appendix 1). The accompanying statement is not helpful as it merely states that goes from “Mill Lane to Musberry Lane” and gives six-figure grid references for each end, which are not very specific.
- 8.14 The County Council records show that the claimed route is not the route shown on either the revised draft map or the current definitive map but is that shown C – F – D – E on Drawing 14/04/1. They also show that the landowner at the time acknowledged that there was a public right of way in this position and that he was anxious to have it recorded on the definitive map and statement.

Ordnance Survey mapping

- 8.15 The **1886 Ordnance Survey First Edition map** sheet 7NE (scale 1:10560) shows the route as double pecked lines from point C on Mill Lane north east to the wide part of Musbury Lane near point E. It is marked 'F.P.' alongside.
- 8.16 The **1902 Ordnance Survey Second Edition map** sheet 7NE (scale 1:10560) shows the route as double pecked lines from point C on Mill Lane north east to the wide part of "Musberry Lane" near point E (Appendix 2).
- 8.17 The larger scale **1902 Ordnance Survey Second Edition map** sheet 7.6 (scale 1:2500) shows the route with more detail as double pecked lines from point C on Mill Lane along the northern side of buildings and north east across an open field with a line marked across the route near point E, possibly indicating a gate, then widening to join Musbury Lane. It is marked 'F.P.' alongside.
- 8.18 The **1958 Ordnance Survey map** at a smaller scale does not show the path.
- 8.19 The early Ordnance Survey maps therefore support the proposal as they provide evidence that a footpath existed on the proposed line C – F – D – E.

Aerial Photographs

- 8.20 Aerial photographs from 1947, 1972 and 1997 do not show any marks on the ground on either the recorded or proposed routes and do not show exits onto Mill Lane at point A or onto Musbury Lane at point B.
- 8.21 The 2002 photograph shows wear on the grass at the entrance to the field at the rear of Spring Cottage at point D. There is also heavy wear between point E at Musbury Lane and approximately where the recorded route crosses the field boundary north of Ivers Cottages. However, there is no exit apparent onto Mill Lane at point A and it appears to be a route used by the landowner to access the fields.
- 8.22 The aerial photographs tend to support the proposed modification as there is no evidence of gaps through the hedges at either point A or point B but they do not provide strong evidence.

Obstruction reports

- 8.23 In addition to the report sent with the Parish Council's claim in 1972 there are also two other records of obstruction of the path C – F – D – E. In 2011 a report stated that the path had been obstructed for at least 4 years and had a padlocked gate and in 2012 a local resident reported obstructions including brambles and an electric fence.

9 Analysis of user evidence

- 9.1 Six witness forms were submitted with the Parish Council's claim in 1972, giving evidence of use varying from 25 to 50 years prior to 1972.

- 9.2 The reasons given for using the path in all cases was for pleasure. Most users state that there was a stile next to Ivers Cottage and Mr Southgate mentions a gate with a footstep on it at the Musbury Lane end. He also states that on the weekend of 23 April 1972 the stile had been wired up with barbed wire and that a notice had been “displayed at the Mill Lane end for several days in April 1971 saying “Beware of the steers” but was removed”.
- 9.3 All the witnesses except Mr Southgate state that their use was either occasionally or once a month. Mr Southgate states that his use was also once a month until August 1969 and three times a week since then.
- 9.4 Although Section 31 of the Highways Act 1980 does not specify the minimum number of users required to raise a presumption of dedication it does require that their use must have been for a minimum period of 20 years preceding the date the right to use the route was brought into question.
- (a) The obstruction of the stile at point D in 1972 is evidence of bringing the use of the route into question. The user evidence supplied at the time indicates that the route had been used by the public for many years.
- (b) The notice that Mr Southgate mentions also indicates that the landowners were aware that the public was using the route on the line proposed and were warning of the presence of livestock.

10 **Analysis of evidence or representations in support of the proposal**

- 10.1 The Ramblers’ representative’s evidence is from witnesses and from historical maps:
- (a) Local residents do not remember a path A – B.
- This supports the proposed modification.
- (b) The 1902 map extract shows the footpath on the proposed line.
- This is described in paragraph 8.16 above.
- (c) The 1984 map supplied does not show the path at all.
- This may have been because the path was claimed after the first definitive map in 1966 and would not have been shown on a definitive map until the current definitive map in 1989. (The revised draft map was not a definitive map.) The Ordnance Survey would have had no information to plot the path until 1989. Therefore the evidence from this map is neutral.

11 **Analysis of evidence or representations against the proposal**

- 11.1 Jean and Peter McErlain of Greenways raised several points:
- (a) The 1902 map shows the footpath away from the boundaries of Greenways and Spring Cottage.

- The older maps do show the path further away but by the time the claim was made Ivers Cottages had been built and it appears that the path was squeezed into a narrower route.
- (b) The buildings of Ivers Cottages are not shown.
- The date at the bottom of the map states that revisions were made up to 1900, which may have been before the cottages were built.
- (c) The 1958 Ordnance Survey map does not show the path at all.
- All Ordnance survey maps since 1889 have a disclaimer regarding the depiction of public rights of way.
- (d) The 1974 revised draft map showed the path in the field north of Greenways and Spring Cottage and none of the supporters of the 1972 Review objected.
- The scale of the revised draft map is very small at 1:25000, with the path in total measuring less than one centimetre in length. It is difficult to see that the path is shown incorrectly without magnification.
- (e) There has recently been little or no use of the path in recent years.
- As this is not an application for a definitive map modification order there has been no-one to gather user evidence. County Council records show that there have been at least two reports that the path is blocked from public use in 2011 and again in 2012. This indicates that people are trying to use it.
- (f) There was a transfer of land between Spring Cottage and Greenways in 2010. Correspondence at the time acknowledged the apparent inaccuracies in 1974 and 1989.
- The transfer of land does not affect the public right to use the route. The letter referred to prompted this investigation.
- (g) The revised draft map route in 1974 took into account the building of 1 and 2 Ivers Cottages across the original line of the path.
- The decision of the Special Review Committee in 1973 was to uphold the route as claimed. The route that should have been shown on the revised draft map is therefore C – F – D – E.
- (h) They suggest routing the path north of Nos 1 and 2 Ivers Cottages.
- A definitive map modification order can be made only on the basis of the balance of evidence. The evidence from the Special Review claim and from historic maps does not suggest that the currently recorded route A – B is correct. If a modification order is made and confirmed on the proposed route, Footpath 111 may be diverted onto another alignment by way of a separate legal process, a public path diversion order under the Highways Act 1980.

11.2 Clive Whitbourne and Lucy Evershed of 2 Ivers Cottages also raised several points:

- (a) The proposed route has not been used since they moved there in 2003. The route ceased to exist when the cottages were built in 1902.
- Historical maps since 1886 onwards have shown a path in this vicinity. The Parish Council claim included evidence from witnesses that had used the path up to 50 years prior to 1972. A public path cannot cease to exist unless extinguished by a legal order.
- (b) C – D was used only by the owners of Ivers/Spring Cottage until the land swap in around 2011.
- The land swap concerns the private rights of the landowners and does not affect public rights. The evidence from the historical maps and witnesses shows that members of the public have also used the path for many years. Obstructions were reported on the path in 2011 and 2012, which shows that it is still needed for public use.
- (c) A resident of Musbury Close has used the path C – D as an unauthorised access to their property.
- The resident is entitled to use the route of the public path but not to deviate to access their property without permission from the landowner.
- (d) The wooden gate at E has been locked for the past ten years.
- The proposed route of the path has been used for many years prior to the obstructions in recent years and in 1972.
- (e) Assured that no right of way existed as proposed, as shown on the definitive map.
- The assurance given would have been that there was no *recorded* public right of way there. This would have been accurate as the recorded route is as shown A – B and that is what is proposed to be modified.

12 **Analysis of other submissions**

12.1 Ms Blackford points out that some of the boundaries are not shown correctly.

- The boundaries in question are not identified. They are plotted by the Ordnance Survey and the County Council has no control as to their position.

12.2 The remainder of the submissions contain no evidence for consideration.

13 **Conclusions**

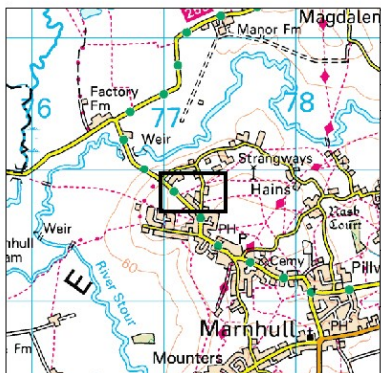
13.1 It is necessary for members to decide whether:

- (a) A right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist (in the respect of the proposed route C – F – D – E) as this route is not currently recorded with public rights.
 - (b) There is no public right of way over land shown in the map and statement as a highway of any description (in respect of the route shown A – B).
- 13.2 The documentary evidence supports the proposed modification very strongly. The older First and Second Edition Ordnance Survey maps have shown the path in this position and the Special Review documents reinforce this, especially the depiction on the claim map that indicated the route of the path and that it started from Mill Lane at the “Gate to Ivers Cottage”. In addition, the letters from the owner of Ivers Cottage indicate that he was aware of the existence of the path through his property.
- 13.3 If members are satisfied that the documentary evidence does not show, on balance, that a public vehicular right exists they should consider whether it, in conjunction with the user evidence constitutes an inferred dedication, or whether the user evidence alone is sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.
- 13.4 The relevant period of use by members of the public, as of right and without interruption, to establish rights by presumed dedication under Section 31 of the Highways Act 1980, is taken to be 20 years or more prior to 1972, when the obstruction was reported by the Parish Council. There are further dates of bringing into question of 2011 and 2012 when further obstructions were reported but there is no user evidence to examine prior to these more recent dates.
- 13.5 As this investigation has been made without the benefit of user evidence submitted with an application for a definitive map and statement modification order the user evidence is limited to six users. However, their use spans many years prior to 1972, from 1922 onwards.
- 13.6 On balance, a presumed dedication under Section 31 of the Highways Act 1980 is satisfied, with 20 or more years use of the way by the public. Therefore there is, on balance, sufficient evidence to demonstrate that public rights exist along the proposed route and not on the recorded route and therefore an order should be made.
- 13.7 If Section 31(1) of the Highways Act 1980 is considered not to apply, the evidence of use, together with the historical documentary evidence, is considered, on balance, sufficient to raise an inference of dedication of a public right of way on foot on the proposed route and not on the recorded route under the common law. In addition, the evidence from Mr Moseley, the owner of Ivers Cottage, could be seen to be a dedication of the route as a public right of way. Although he does not give the actual route but relies on the claim from the Parish Council, it can be concluded that the route he wrote about was the same one claimed as he did not object to it being shown on the revised draft map on this alignment.

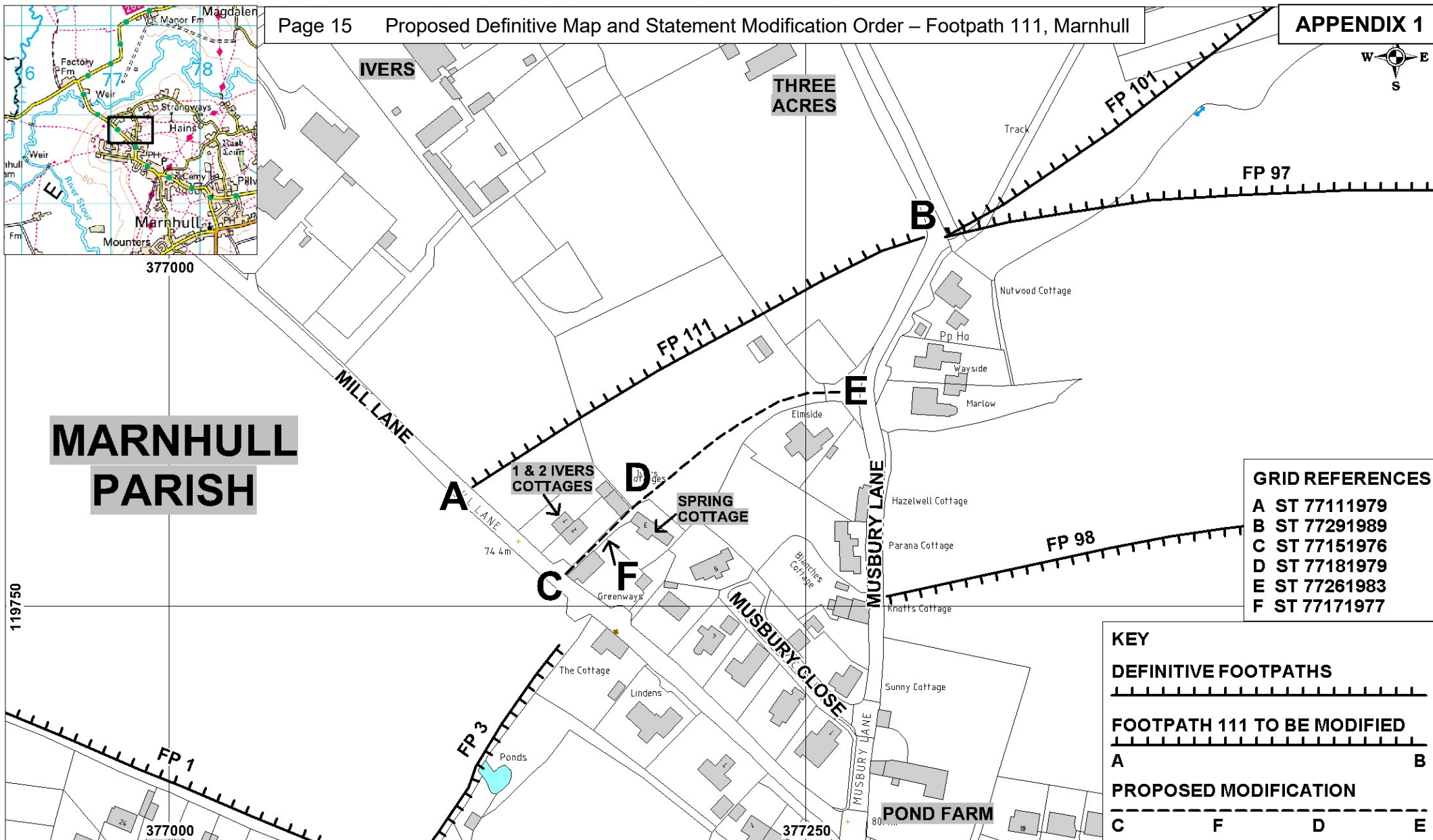
- 13.8 The balance of evidence shows that the currently recorded route is shown in error on the definitive map of rights of way and this should be modified to the route as proposed.
- 13.9 Therefore it is recommended that the definitive map and statement should be modified to delete Footpath 111 as shown A – B and instead to add it as shown C – F – D – E on Drawing 14/04/1 (Appendix 1).
- 13.10 If there are no objections to a modification order, the criterion for confirmation may be presumed to have been met and therefore, in these circumstances, the order should be confirmed.

Mike Harries

Director for Environment and the Economy
December 2014



377000



GRID REFERENCES

A ST 77111979
B ST 77291989
C ST 77151976
D ST 77181979
E ST 77261983
F ST 77171977

KEY

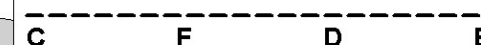
DEFINITIVE FOOTPATHS



FOOTPATH 111 TO BE MODIFIED



PROPOSED MODIFICATION



WILDLIFE AND COUNTRYSIDE ACT 1981

PROPOSED DEFINITIVE MAP MODIFICATION ORDER - FOOTPATH 111, MARNHULL

THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS

Ref: 14/04/1

Date: 11/11/2014

Scale 1:2000

Drawn By: ACWH

Cent X: 377218

Cent Y: 119821

GEOGRAPHICAL INFORMATION SYSTEMS



Dorset County Council

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Law

1 Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the County Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery by the authority of evidence which shows: -
- (a) There is no public right of way over land shown in the map and statement as a highway of any description;
 - (b) That a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.
 - (c) That any other particulars contained in the definitive map and statement require modification.
- 1.2 The committee must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.3 The County Council must make a modification order to
- (a) Add a right of way to the definitive map and statement if the balance of evidence shows either:
 - (i) that a right of way subsists or
 - (ii) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
 - (b) Delete a right of way from the definitive map and statement if evidence of some substance can outweigh the initial presumption that the way has been correctly included.
- 1.4 An order can be confirmed only if, on the balance of probability, it is shown that the route should be modified as described.
- 1.5 Where an objection has been made to an order, the County 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 County 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 into 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.
- 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 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.
- 2.4 Section 32 of the Highways Act 1980 says that the Committee 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 Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.
- 3.2 Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
- (i) Everyone has the right to respect for his private and family life, his home and his correspondence.

- (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

3.3 Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international 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.

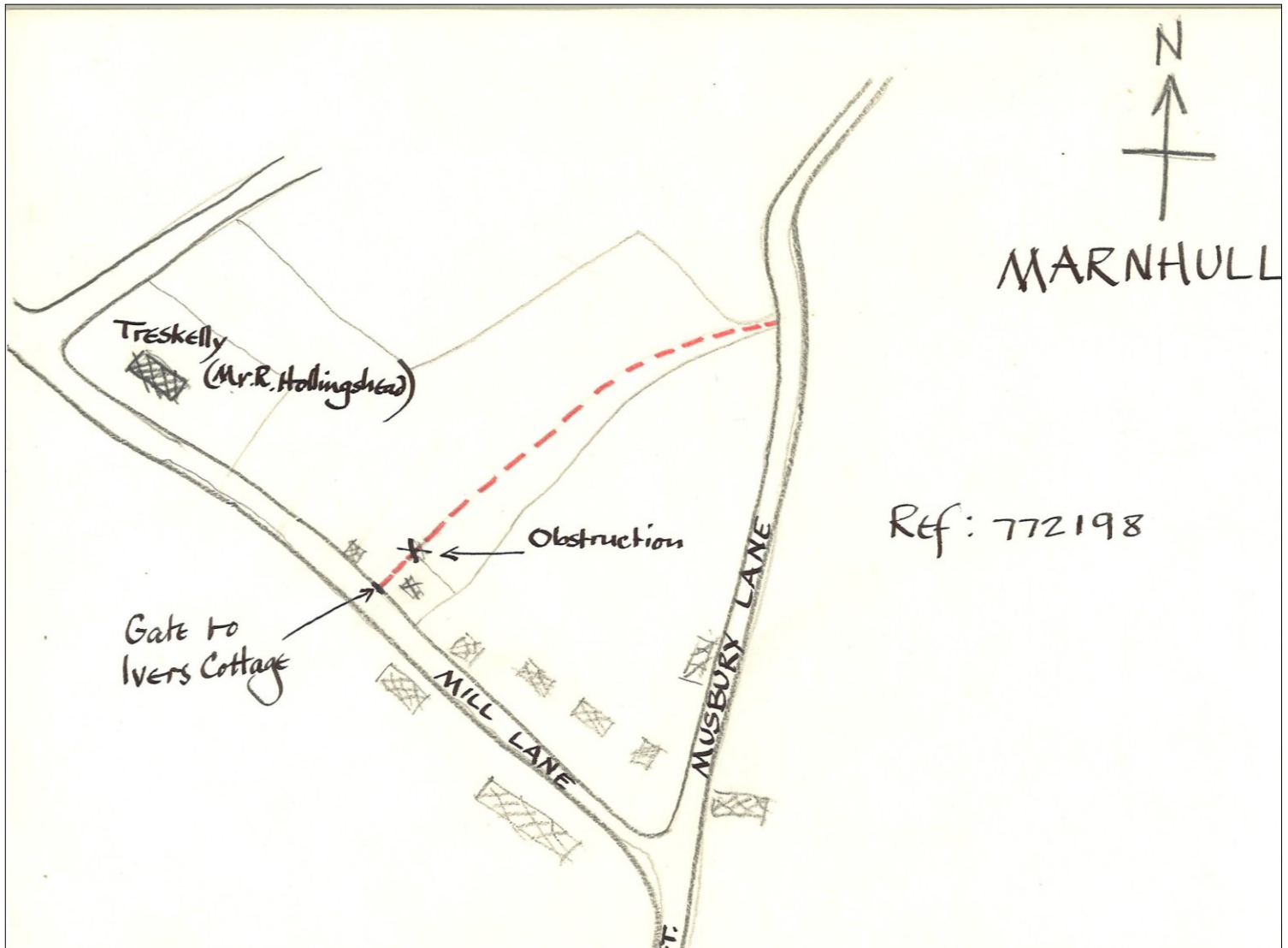
Table of documentary evidence

Date	Document	Comment
1884	NOTE: The classification of roads by administrative status was practiced on Ordnance Survey maps from 1884. All metalled public roads for wheeled traffic were to be shaded.	
1886	Ordnance Survey First Edition map scale 6 inches:1 mile	Path approximately shown C – F – D – E with double pecked lines and annotated 'F.P' [footpath] alongside.
1889	NOTE: The statement that “the representation on this map of a road, track or footpath is no evidence of a right of way” has appeared on Ordnance Survey maps since 1889.	
1902	Ordnance Survey Second Edition map scale 6 inches:1 mile (1:10560)	Path approximately shown C – F – D – E with double pecked lines.
1902	Ordnance Survey Second Edition map scale 25 inches:1 mile (1:2500)	Path approximately shown C – F – D – E with double pecked lines and annotated 'F.P' [footpath] alongside. Ivers Cottages not shown.
1912	NOTE: The system of classification adopted on Ordnance Survey maps in 1896 was abolished in November 1912.	
1947	Aerial photograph	Shows a wide gap between Greenways and Ivers Cottages but the path is not apparent.
1949	National Parks and Access to the Countryside Act 1949 NOTE: Parish Councils received advice on the recording of public rights of way in a booklet provided to them by the Open Spaces Society. The booklet included information on the different classes of rights of way which included the designations of CRB (Carriage or Cart Road Bridleway) and CRF (Carriage or Cart Road Footpath). Parish Councils were advised that a public right of way used mainly by the public on foot but also with vehicles should be recorded as a CRF and a route mainly used by the public on foot or horseback but also with vehicles should be recorded as a CRB.	
1953	Marnhull Parish Survey	Path is shown on line C – F – D – E but not claimed by the Parish Council.
1958	NOTE: In 1958 the National Parks Sub-Committee determined that the designation of certain rights of way as CRF or CRB be abandoned and that in future such rights of way be shown only as footpaths (F.P.) or bridleways (B.R.)	
1958	Ordnance Survey map	Does not show the footpath.
1959	Draft map for the north area	Does not show the footpath.
1964	Provisional map	Does not show the footpath.
1967	First definitive map	Does not show the footpath.
1972	Aerial photograph	Does not show the footpath.

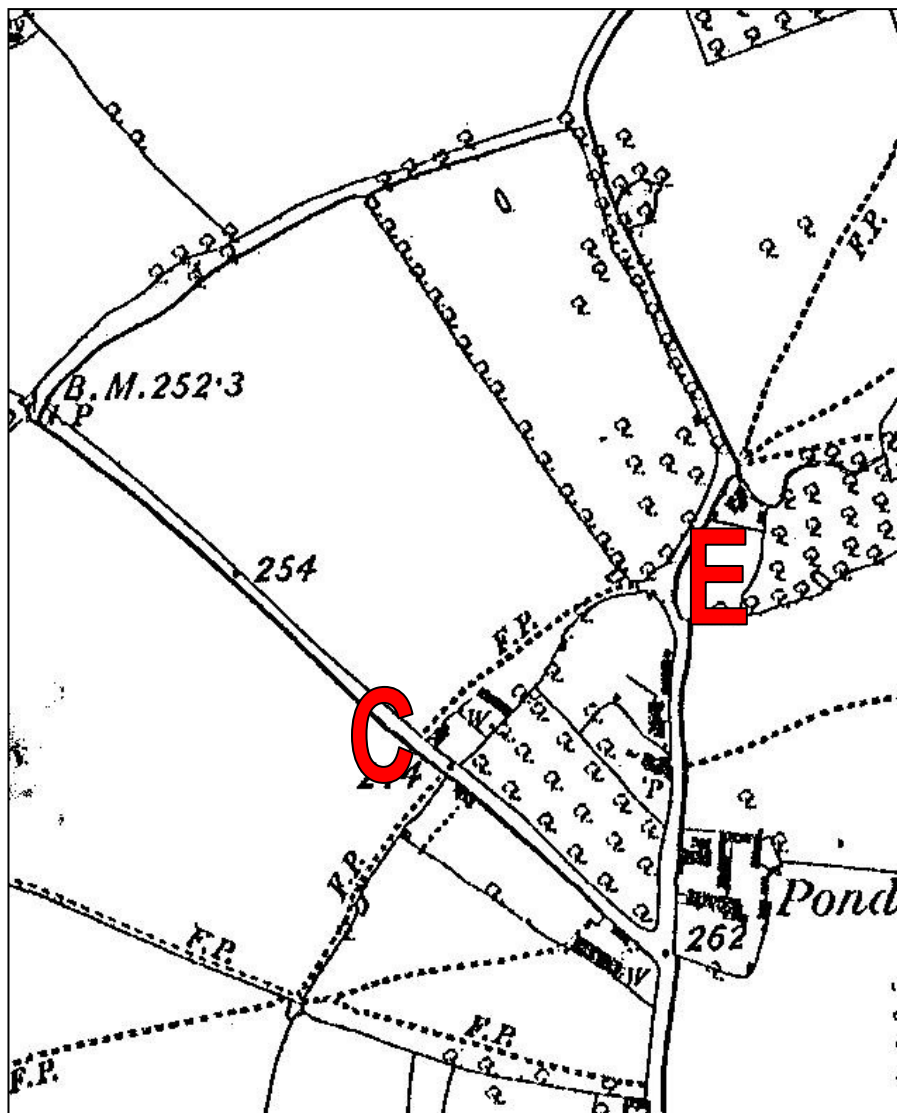
Date	Document	Comment
24 April 1972	Marnhull Parish Clerk reported an obstruction	“Stile wired up and top rail removed” at point F.
15 May 1972	Letter from Mr Moseley, owner of Ivers cottage	Informed the county Council of a “gap in a footpath route”. Sought confirmation “that the gap was left not as a deliberate omission” and was “interested in securing the addition of the right of way”.
22 May 1972	Letter from the County Council to Mr Moseley	Reported that no claim had been received. Advised Mr Moseley to make his representations when the draft map was published
20 June 1972	Letter from Marnhull Parish Council to Mr Moseley	Confirmed “that the path in question was not deliberately omitted from the footpath map”.
27 September 1972	Marnhull Parish Council submitted a claim for a public right of way	Claim showed the route C – F – D – E and annotated as starting at the “Gate to Ivers Cottage”. Enclosed evidence from six users of the claimed path and the obstruction form.
20 November 1972	Letter from Mr Moseley’s Solicitors to the County Council	They state that they understand that the “Parish Council is holding original statements from 8 local residents concerning the existence of the footpath”.
23 November 1972	Letter from the County Council to Marnhull Parish Council	Requested the evidence referred to by Mr Moseley’s Solicitors.
23 November 1972	Letter from the County Council to Mr Moseley’s Solicitors	Advised that the County Council had taken this up with the Parish Council but also reiterated that if Mr Moseley wished to make a claim he should do it when the draft map was published.
28 November 1972	Letter from Mr Moseley’s Solicitors to the County Council	Information passed to Mr Moseley.
5 December 1972	Letter from Marnhull Parish Council to The County council	“All the evidence to support the claim to Footpath MR 771197 – 773198” had been forwarded to the County Surveyor’s Department on 27 September.
5 December 1972	Letter from the County Council to Mr Moseley’s Solicitors	Confirmed that the Parish Council had taken up the claim in connection with the Review.
11 September 1973	Special Review Committee decision in respect of Parish Council’s claim	Claim upheld – sufficient evidence of public user.

Date	Document	Comment
13 September 1973	Letter received from Mr Moseley to the County Council	Asked for an estimate of “the time at which you will be arranging for revisions to the present map to be advertised.” Also asked for confirmation that Parish council had made a claim to “insert in map the path linking Footpath 3 & Footpaths 97 & 101”. “Part of such a link would pass over my land at Ivers Cottage”.
14 September 1973	Letter from the County Council to Mr Moseley	Informed him of the Parish Council’s claim and advised that the Sub-Committee’s decision would be known when the revised draft map was published in 1974, to which persons could object.
1974	Revised draft map	Claimed footpath added as Footpath 111 but shown too far north.
1989	Current definitive map	Footpath 111 as shown A – B but still shown too far north.
1997	Aerial photograph	Does not show the footpath.
2002	Aerial photograph	Shows a gate or similar at point C and a wear mark at point D.
2011	Obstruction report	Footpath has not existed for at least 4 years, Access on main road disappeared and no sign or access from Musbury Lane. Gate is padlocked.
2012	Obstruction report	An issue with entrance behind Greenways. A problem with brambles and an electric fence may have also been obstructing the path.

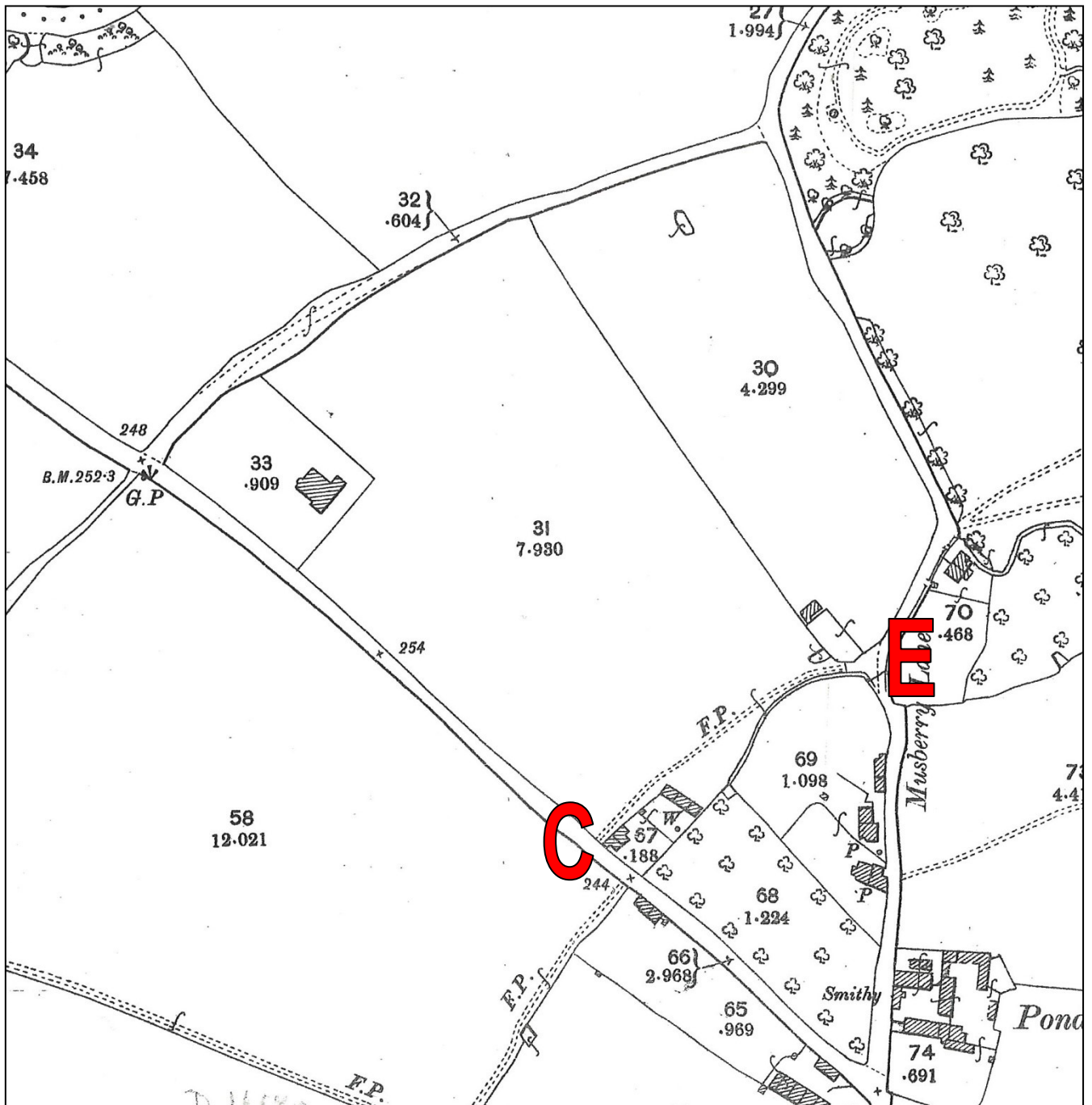
1972 Marnhull Parish Council claim sketch map



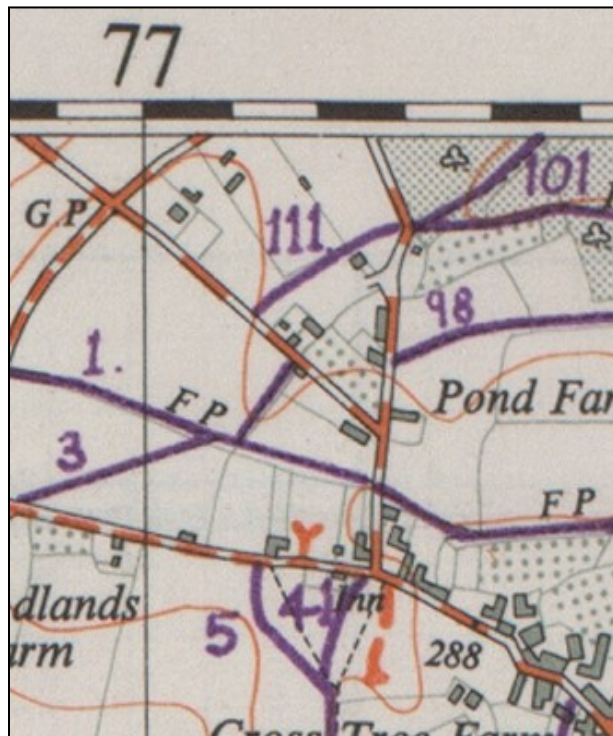
1886 First Edition Ordnance Survey map scale 1:10560 (enlarged)



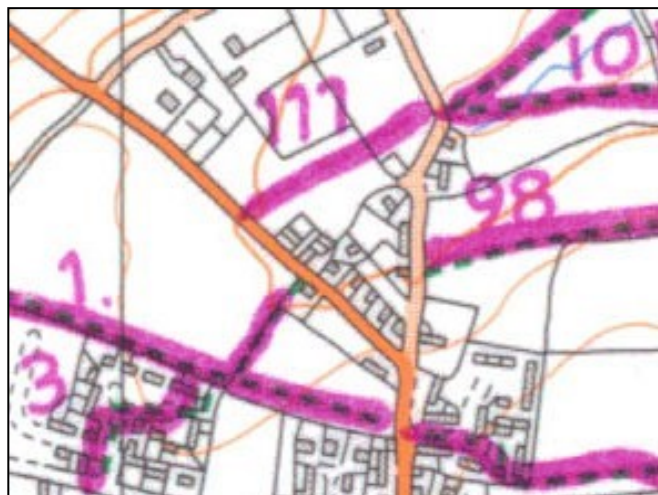
1902 Second Edition Ordnance Survey map scale 1:2500 (to scale)



1974 Revised Draft map (enlarged)



1989 Current definitive map (enlarged)

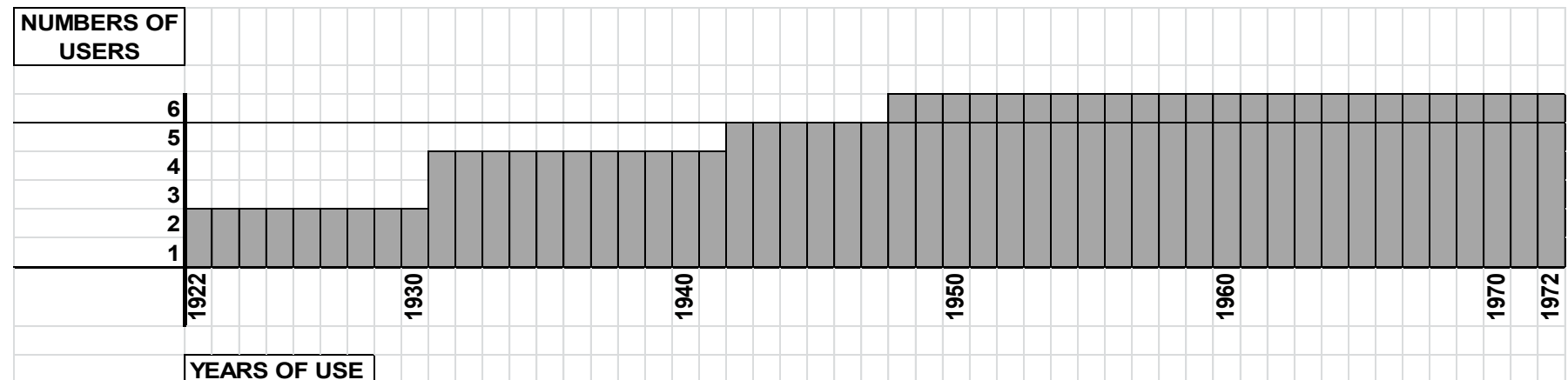
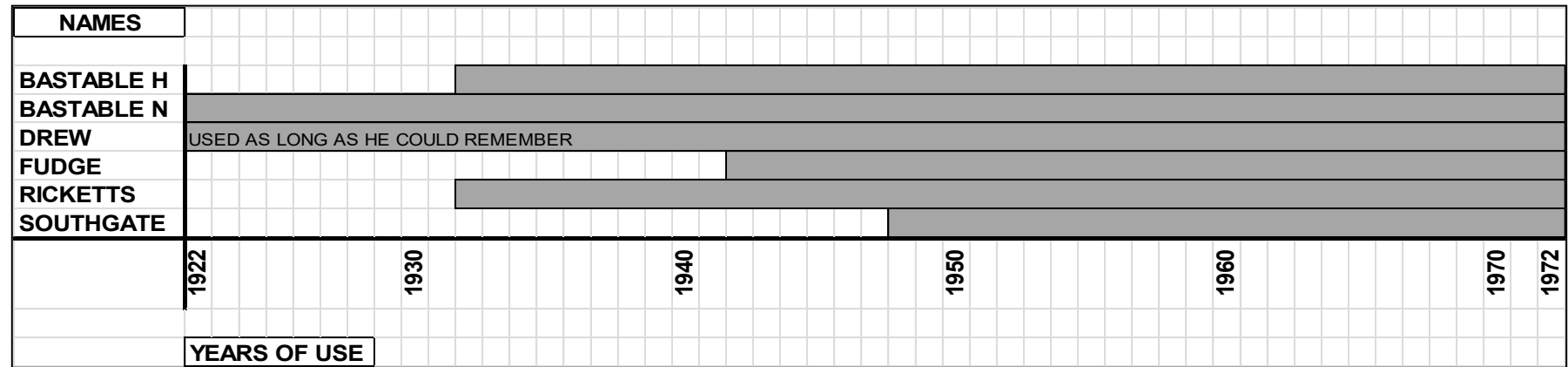


User evidence from forms submitted in 1972

Table of user evidence

NAME	DATES	FREQUENCY OF USE	TYPE OF USE	DETAILS OF USE / COMMENTS
Hilda Bastable	40 years	Occasionally	Footpath	Used for pleasure. Stile next to Ivers Cottage, Mill Lane. Friends and family regarded it as public.
Nellie Bastable	50 years	Once a month	Footpath	Used for pleasure. Stiles. Friends and family regarded it as public.
Arthur Drew	"As long as can remember"	Occasional	Footpath	Used for pleasure. Stiles. Friends and family regarded it as public.
Marion Fudge	30 years from 1942	Occasionally	Footpath	Used for pleasure. Stile next to Ivers Cottage, Mill Lane. Friends and family regarded it as public.
Reginald Ricketts	40 years	Many times	Footpath	Used for pleasure. Steps on the Gate entering Musbury Lane. Friends and family regarded it as public.
Arthur Southgate	25 years	Average 1 per month until Aug 1969 and 3 times per week since	Footpath	Used for pleasure. Stile at Mill Lane end, which was "wired up with barb-wire during weekend 23 rd April 1972". Gate as Musbury Lane end (gate used to have footstep a on it). A notice on a piece of board was displayed at Mill Lane end for several days in April 1971 saying "Beware of the Steers" but was removed.

Chart to show periods and level of use from evidence forms submitted in 1972



Regulatory Committee

Minutes of a meeting held at County Hall,
Colliton Park, Dorchester on 18 December 2014.

Present:

David Jones (Chairman)

Daryl Turner (Vice-Chairman)

Pauline Batstone, Steve Butler, Barrie Cooper, Beryl Ezzard, Mike Lovell, David Mannings,
Margaret Phipps and Mark Tewkesbury.

Officers attending:

Emma Baker (Management Engineer), Andrew Brown (Manager – Traffic Engineering), Ken Buchan (Coastal Policy Manager), Stephen Cornwell (Principal Planning Officer), Phil Crowther (Solicitor), Mike Garrity (Team Leader), Sarah Meggs (Senior Solicitor), Vanessa Penny (Team Manager – Definitive Map), Matthew Piles (Head of Economy), David Northover (Senior Democratic Services Officer) and Andy Wealsby-Hughes (Rights of Way Technical Assistant).

Paul Kimber, County Council Member for Portland Tophill, attended the meeting by invitation for minutes 68 to 70.

Public Speakers

John Gill, local resident – minutes 68 to 70.

Scott Irvine, local resident – minutes 68 to 70.

Apologies for Absence

59. Apologies for absence were received from Ian Gardner, Mervyn Jeffery, Peter Richardson, David Walsh and Kate Wheller.

Code of Conduct

60.1 There were no declarations by members of disclosable pecuniary interests under the Code of Conduct.

60.1 With regard to consideration of the Navitus Bay Wind Park item, several members, namely David Jones, Margaret Phipps, Beryl Ezzard and Steve Butler, drew attention to the fact that they had discussed the application at their respective District Council meetings but, in all cases, their involvement should not be seen to have prejudged the application. Although the County Council was not the final determining authority on this issue, the Senior Solicitor appreciated that those members had taken the opportunity to clarify their position, which would help to satisfy public perception about this.

Minutes

61. The minutes of the meeting held on 27 November 2014 were confirmed and signed.

Public Participation

Public Speaking

62.1 There were no public questions received at the meeting in accordance with Standing Order 21(1).

62.2 There were no public statements received at the meeting in accordance with Standing Order 21(2).

Petitions

62.3 There were no petitions received in accordance with the County Council's petition scheme at this meeting.

Traffic Regulation Matter**Contra Flow Cycle Scheme - Westham Road, Weymouth**

63.1 The Committee considered a report by the Head of Highways which provided an assessment of the documents and evidence leading to the proposed order consultation and resulting correspondence relating to the proposed creation of a contra flow cycle lane in Westham Road Weymouth.

63.2 With the aid of a visual presentation, officers explained the principles of the proposal and what it was designed to achieve. It was envisaged that by providing an environment which accommodated a safer cycle route and the widening of the southern footway, the scheme would achieve the following positive benefits and improvements:-

- improve opportunities for undertaking healthy, active travel;
- improve access to the town centre for the sustainable modes of walking and cycling, by enabling the completion of the cycleway route;
- improve real and perceived safety of vulnerable road users,
- by reducing real and perceived road danger, people could be more likely to cycle in and to the town centre;
- improve the footway environment for people with disabilities and mobility impairments who relied on walking aids or mobility scooters;
- provide more opportunities for young and older people to walk and cycle in the town centre;
- ensure that traffic flows were not impeded by parked vehicles;
- retain sufficient loading/unloading facilities for local businesses and their customers; and
- retain (albeit reduced) provision for up to 3 hours parking by Blue Badge holders.

63.3 Members were informed of the cost of the scheme, this being funded from the Weymouth – Dorchester Corridor Local Sustainable Transport Fund. This aimed to support economic growth and reduce carbon emissions by reducing traffic congestion, improving access and facilitating uptake of sustainable travel. Officers reminded the Committee that all of these principles aligned with the Corporate Aims of the County Council.

63.4 The Committee were shown photographs and plans which provided an illustration of the scheme's relationship with the junctions of adjoining side roads and with retail development and community buildings. How signage would be applied and how the carriageway would be delineated was also explained. Officers explained that whilst Weymouth had an effective walking and cycling network, largely based on a traffic free route, the cycle network terminated short of the town centre, at Westham Bridge. Consequently it proved somewhat difficult to cycle safely and conveniently to and from the town centre without encountering unnecessary obstacles.

63.5 The results of the consultation exercise held into the preferred cycle link into town had comprised three options, with Option 2 - the proposed contra flow scheme – being favoured by the majority. Officers considered that the cycle contra-flow lane would provide a safe, direct route from the Esplanade along the south side of Westham Road to Westham Bridge and link with other safe cycle routes in the town.

63.6 The Committee were informed that the proposals would require some significant changes to parking arrangements along the road but that, overall, this rationalisation would deliver benefits to the way in which the waiting restrictions and their exemptions were applied. Some provision would still be made for loading bays, taxi ranks and disabled parking which would address some of the concerns raised by those objecting to the scheme.

63.7 Whilst the scheme had generated three objections, principally on the grounds of diminishing road safety and the loss of spaces for blue badge holders, officers explained that in making an assessment of the impact of the scheme, the implications for all road users had been taken into account in its design. On balance, officer's considered that the scheme which was proposed provided improvements to the competing demands for road space.

63.8 Members then asked questions about the route chosen for the scheme compared to other alternatives; what the precise signage would be and how it would be applied; what physical features would be put in place to prevent any conflict between cyclists and pedestrians; and what arrangements were to be put in place to assist pedestrians in crossing Westham Road at its junction with Commercial Road.

63.9 Officers provided explanations for each in turn and, in particular, explained that it would be unsafe to route the scheme along the harbour side given the concern over the existing rail track tramlines situated in the road and the hazards these posed for cyclists. The responsibility for the tracks was explained and, as it stood, there was no plan for their removal. Furthermore this was considered to be a more tortuous route than that proposed and, therefore, it was likely that its use would be limited.

63.10 In debating the proposal, members generally had reservations about the relationship between cyclists and pedestrians along this route, especially taking into consideration traffic emerging from side roads. They considered that having been used to the direction of the general flow of traffic, pedestrians would not necessarily expect cyclists travelling in an opposite direction, despite the signage and road markings being proposed.

63.11 As such they considered that this could generate greater confusion and might well compromise road safety to a greater extent than that which already existed, especially given that the route was heavily pedestrianised over its relatively short length. They considered that the relationship of the scheme to the Wilkinson's retail store, around which people tended to congregate, should be borne in mind. Officers explained that a full safety audit had been undertaken on this aspect, which had been taken into account in drawing up the proposals.

63.12 Members also expressed concern at the road being so heavily congested in terms of motorised traffic, being part of a main bus route, without cyclists being encouraged to use the route as well. They asked that if the scheme was to go ahead, and before proposals were finalised, they should be assured of precisely what signage would be used, where this would be placed and what physical constraints might be erected so as to avoid any direct conflict between cyclists and pedestrians, especially around the junction of Westham Road and Commercial Road.

63.13 Whilst members welcomed the principles of what this scheme was designed to achieve, they had reservations on how it could be applied without compromising road safety. Accordingly they were not confident that the scheme would operate as envisaged and had serious misgivings that, if implemented as proposed, it might well increase conflict in the relationship between pedestrians and cyclists, rather than diminish it. Other members

considered the scheme to be wholly appropriate and in accordance with the County Council's Corporate Aims and welcomed it being implemented.

63.14 On being put to the vote, the Committee rejected the recommendation that the Cabinet be asked to approve that the Order be made as advertised, and consequently decided that the Order should not be made, as they remained concerned that road safety would be compromised by the scheme being implemented as proposed.

Recommended

64. That the Cabinet be asked to reject the Order being made as advertised, on the grounds that the Committee were not satisfied that road safety would not be compromised by the scheme being implemented as proposed.

Reason for Recommendation

65. On the grounds of road safety.

Planning Matters

Navitus Bay Wind Park Update and Turbine Mitigation Option

66.1 The Committee considered a report by the Head of Economy which provided an update on proceedings regarding the Navitus Bay Wind Park and the Turbine Mitigation Option which had been submitted as part of the process.

66.2 Officers reminded the Committee that the Examination by the Planning Inspectorate into the proposed Navitus Bay Wind Park opened on 11 September 2014 and would close on 11 March 2015. Dorset County Council was a statutory consultee and registered interested party. The Council had already played an active role in the Examination through the submission of written evidence; the scrutiny of evidence from others (principally the Applicant); responding to written questions from the Examining Panel; and presenting oral evidence at the issue-specific hearings.

66.3 The report brought members up to date with progress of the application and the conduct of the Examination. Members were informed that a significant new issue had arisen through the introduction by the Applicant of an alternative scheme - termed the Turbine Area Mitigation Option - which proposed to reduce the number of turbines and increase the distance of the nearest turbines from the shore.

66.4 Officers explained that the Turbine Area Mitigation Option had raised some complex issues which had involved extensive discussions with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee. Members were informed that the Cabinet had considered this issue at their meeting the previous day, 17 December 2014 and had agreed a revised resolution from that recommended in the joint Cabinet / Regulatory Committee Report. Consequently, the views of the Cabinet, and their decision, was reported to the Committee both orally and within the provisions of the Update Sheet provided to members prior to the meeting, and appended to these minutes. This recommended that the Committee agree a revised resolution from that originally proposed in the report to reflect that of the Cabinet, in the interests of presenting a consistent approach.

66.5 With the aid of a visual presentation officers explained the details of the Mitigation Option submitted by the Applicant and the implications of this for the process. Primarily, the Applicant had offered to reduce the number of turbines below the current range of 120-194 to 76 -105 and remove those closest to terrestrial viewpoints. The consequences of this on how the Wind Park would operate and the power it would generate was explained.

66.6 Officers also explained the comparisons between the Mitigation Option and the Application Scheme and what consideration of the mitigation option was being undertaken by the Examining Authority, including the legal implications of this.

66.7 Officers clarified that the Mitigation Option was not a new application, but was, in effect, an alternative scheme within the same site. Nevertheless, this represented a significant variation from the original application and it was still to be determined definitively how the Examining Panel would treat this option. It would be determined on 14 January 2015 whether the Mitigation Option would be accepted.

66.8 What could be determined at this stage however was that whilst the Examining Panel had emphasised emphatically that the Examination remained that of the original application, it was also twin-tracking preparation for consideration of the Mitigation Option, taking into account comments received from interested parties and statutory consultees as part of an extended consultation exercise into the application.

66.9 The position of the County Council regarding the Turbine Mitigation Option was clarified by officers. The Authority had been asked as a statutory consultee on their views about the admissibility of the Turbine Mitigation Option and on the implications and predicted effects if this Option were to be adopted. Officers emphasised though that, ultimately, a judgement as to the admissibility of the Mitigation Option would be a matter for the Examining Panel to determine. Officers advised that, whilst the changes proposed were significant, this did not necessarily mean that the Mitigation Option would amount to a new project. The implications of this and its consequences were detailed in the report, with varying scenarios being illustrated, depending on what decision the Panel came to.

66.10 Members were advised that essentially the material difference was fewer turbines, omitting those closest to the shore. Consequently, the main focus for consideration from Dorset County Council's perspective would be on the visual impact of the Mitigation Option. Whilst acknowledging that the visual significance of the reduced scheme would be less than the original proposal, officers were currently assessing the degree of reduction and its impact, taking into account that a smaller scheme would also inevitably generate less energy and fewer supply-chain and employment opportunities for local firms.

66.11 Officers advised that an assessment of the Mitigation Option by officers, based upon the limited information and time available, was anticipated to conclude that there would still be an adverse visual impact from the Mitigation Option, or from any such scheme proposed in this location off the Dorset coast, albeit that the reduced scheme will have less visual impact than the proposed original.

66.12 Accordingly based on evidence before the Committee on the adverse impacts of the original scheme, debate within the Council, at both Planning and Regulatory Committees and at the Cabinet, officers recommended that the position of Dorset County Council in opposing the development as submitted in the Application should be maintained and that the Committee should reaffirm its commitment to this.

66.13 One possible standpoint might then be taken that Dorset County Council remained opposed to any form of wind farm development within the allocated zone but recognised that if the Secretary of State was eventually minded to approve a wind farm off the Dorset coast, this Mitigation Option would be preferable to the original Application scheme, without prejudice to the need to secure suitable mitigation for any residual adverse impacts.

66.14 The Committee were informed that the view of the Cabinet the previous day had been to reaffirm its opposition to the scheme in principle, but to recognise the significance of the Mitigation Option and the implications of this. Accordingly they had resolved that:-

- the position of the County Council be reiterated, that it is opposed to wind farm development in the allocated zone.
- the Turbine Mitigation Option put forward by the applicant raises significant issues as to the adequacy of public consultation and the examining authority should therefore consider carefully whether the applicant should be required to submit the mitigation option as a fresh application.
- whilst the County Council recognises that the Turbine Mitigation Option appears to have less adverse impact off-shore, it would have the same on-shore impact.
- That the final wording of the response to the Examining Authority's question be delegated to the Head of Economy, after consultation with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee.

66.15 The Committee were asked for their views on both the content of the report and the views made by the Cabinet. Members were concerned that because of the chronology of the meetings there was little scope for them to be able to influence the process other than to endorse what the Cabinet had decided the previous day. Officers pointed out to members that this was the opportunity for the Committee to have input into the response to the Examining Authority, as well as the Cabinet. However they did recognise that the extended consultation on this did provide an opportunity for the County Council to achieve what best they could to benefit Dorset.

66.16 Members therefore acknowledged that they should contribute to the discussion so as to ensure that the interests of Dorset were safeguarded as far as possible. They considered that this should be based on visual, economic and environmental considerations and how Dorset was affected by these.

66.17 They acknowledged that the Mitigation Option would lessen somewhat the visual impact of the development but that there would still be a presence which they considered would go a long way to compromising the environmental status of the coastline, not least how it might affect the UNESCO World Heritage Site status of the Jurassic coast. The considerations which had formed the basis of the previous submission to the Planning Inspectorate were outlined and the Committee considered that these still applied.

66.18 In addition, the Committee considered that the timescale of the extended consultation period was too limited for any meaningful analysis of the Mitigation Option or its implications to be made and that any contribution would too be limited.

66.19 Some members considered that the development should be supported as a means of supplying much needed renewable energy and wind power was one way of achieving this. They felt that any opportunity for achieving this should be taken and the benefits this brought.

66.20 However other members, whilst acknowledging the need to embrace the principle of renewable energy, considered that wind power was not necessarily the most efficient way of achieving this. In particular they considered that this scheme would, on

balance, prove to be detrimental to the character of Dorset and not necessarily bring the benefits that were envisaged by the applicant and was inappropriate the circumstances

66.21 Accordingly, on being put to the vote, the Committee decided that the views of the Cabinet, as set out in minute 66.14 above, should be endorsed and that the Committee's opposition to the development, in principle, should be maintained.

66.22 The Chairman took the opportunity to express his appreciation, on behalf of the Committee, for the work undertaken by the predecessor Planning Committee, and in particular its Chairman, Mike Lovell, on the Navitus Bay application.

Resolved

67.1 That the position of the County Council be reiterated, that it is opposed to wind farm development in the allocated zone.

67.2 That the Turbine Mitigation Option put forward by the applicant raises significant issues as to the adequacy of public consultation and the examining authority should therefore consider carefully whether the applicant should be required to submit the mitigation option as a fresh application.

67.3 That whilst the County Council recognises that the Turbine Mitigation Option appears to have less adverse impact off-shore, it would have the same on-shore impact.

67.4 That the final wording of the response to the Examining Authority's question be delegated to the Head of Economy, after consultation with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee.

Retention and Infilling of Material, Restoration of Land and Relocation of Permissive Footpath at Disused Railway cutting at land at the south of Park Road, Easton Portland

68.1 The Committee considered a report by the Head of Economy on planning application WP/14/00041/DCC for the retention of fill material, addition of further fill material consisting of quarry overburden and its grading and restoration of land to nature conservation use (calcareous grassland) and the relocation of a permissive footpath over the filled area at part of disused railway cutting, land south of Park Road and adjacent to ex-Bottomcombe Masonry Works, Easton, Portland, Dorset. The Committee were also provided with an Update Sheet relating to the provisions of the application.

68.2 The Chairman explained to the Committee that there was currently an application to record the public right of way over part of the application site. Although that application was pending, this Committee meeting was considering only the planning application.

68.3 The Solicitor took the opportunity to advise that, as the Committee's predecessor, the Planning Committee, had visited the site on 30 May 2014 to see at first hand what the application entailed, members who had not attended that visit should determine for themselves whether they considered that they had sufficient knowledge and information about the site to take part in discussion of the application and come to a decision. Whilst it was strongly recommended that members should attend site visits so that they all had the same opportunities to gain an understanding of the issues at hand, there was no absolute legal bar to them taking part in the decision making process if they had not attended. Members understood the implications of this. The Chairman indicated that both he and the Vice –Chairman had seen the site accompanied by the planning case officer from the Rights of Way Team.

68.4 With the aid of a visual presentation officers explained the application, which sought planning permission for the retention of material already placed on site and the placement of further material to provide for restoration to nature conservation use. A permissive footpath was proposed to be formed over the area. Revised plans had been submitted which showed an improved gradient along the route of the proposed permissive path. Officers explained that the material used to infill the cutting would consist of quarry overburden and it was not intended to fill in any further section of the cutting beyond grading the material into the existing butterfly bank.

68.5 As it stood, the infill material had left a steep face towards the remaining part of the cutting and it was proposed that this should be graded and re-profiled to gradually merge it into the adjoining bank and lessen its gradient. The intention was to link the in-filled area with a 'butterfly bank' that had been developed on the northern slope of the cutting to encourage native species. A capping layer was to be spread over the tipped material to create favourable conditions for growth and the ground would then be sown with an appropriate seed mix with the whole area being managed under a conservation management plan.

68.6 Officers clarified that the application being made was for retrospective planning permission, as the works had commenced without consent. Whilst not condoning the apparent breaches of planning control, officers confirmed the good working relationship with the applicant to resolve the issue, which had been conducted in a positive and proactive manner, resulting in a conditional grant of planning permission being recommended.

68.7 Officers confirmed that the application was in general accordance with the development plan and there were no material considerations that suggested the permission should be refused. Due regard had been also given to the presence of a claimed public right of way across the site, the status of which remained uncertain, but it was not considered that the grant of planning permission would in any way prejudice the full determination of that claim.

68.8 Archaeological and ecological evaluation of the site had been made and duly assessed. Officers were not suggesting that the site had no ecological value before the works took place, but, on balance, considered that the extension to the butterfly bank outweighed any loss due to the works. Details of amendments to the proposed conditions were set out in the Update Sheet, with particular provision made for the bird nesting season to be taken into account when the works were undertaken, requiring a time limit for completion of nine months instead of six and for the retention of the three iron fencing posts which were considered to be of some archaeological value.

68.9 The report set out consultations undertaken and representations made, including Portland Town Council objecting to the scheme on the grounds of loss of both a footpath and a natural habitat. They strongly requested that fill material already present should be removed as soon as possible. The Update Sheet provided for a summary of all late representations received.

68.10 The Committee heard from John Gill expressing his concern over how he considered the status of the footpath might be adversely affected by the proposal and what provision was being made to safeguard it. He thought that the evidence for a public right of way was indisputable. He had misgivings over the way in which Portland had been despoiled previously by stone working and quarrying and did not wish to experience the same at this site. He considered that the County Council should take action to prevent this.

68.11 The Chairman asked the Team Manager to clarify the position over the footpath. She confirmed that any grant of planning permission would, in no way, prejudice that claim.

68.12 The Committee then heard from Scott Irvine who was concerned at the adverse environmental and ecological impact the proposal would have on an important wildlife area. He was concerned that the cultural heritage of the area would be harmed by destroying what little of the railway was left. He explained that the area already sustained a rich palette of wildlife which would be compromised by implementing the proposal and that action should be taken to prevent any further destruction of the area.

68.13 The County Council member for Portland Tophill was then invited to share his views. Whilst he recognised that being asked to approve a retrospective application was unsatisfactory, he appreciated the efforts made by the applicant and officers to resolve the issue in a way in which he considered to be now acceptable. Whilst he acknowledged the problems previously experienced with quarrying operations on the island, the advent of the Minerals Liaison Committee had gone a long way to addressing some of those longstanding issues. He considered that what was being proposed now satisfactorily addressed the issue and was happy to support it.

68.14 Members also questioned where spoil from the stone workings might be deposited if it were not to be located in the cutting and asked if there was capacity on site for it to be backfilled and retained. Officers confirmed that the material was not needed to restore the area from which it had come and the application was aiming to facilitate the butterfly bank extension. In light of this being a retrospective application, some members were of the view that the application site should revert to its former character, as favoured by the Town Council, with the fill material already present being removed as soon as possible. Other members made reference to concerns on how some stone working operations had been conducted in the past and that these should be addressed.

68.15 Officers confirmed that regardless of this being a retrospective application, the Committee should treat it in the same way as any other application they were asked to consider, with members being obliged to consider it solely on its planning merits and not to base their decision on any other justification or presumption. Officers advised that if members considered the application to be acceptable on planning grounds, then they should be minded to grant permission. If the Committee were to refuse planning permission, any concerns over breaches of planning control could be addressed by enforcement action if necessary.

68.16 Taking into account the advice provided by officers, members were of the view that any decision taken should be on the merits of the application. Accordingly some members saw this as an opportunity to regulate a practice which had taken place and that improvements could be made to the way in which it was managed.

68.17 Other members however had reservations on what this proposal was designed to achieve and felt that it was either better left as it was or that the infill be removed completely to expose the cutting once again. One member, who served as Chairman of the Borough's Planning Committee, considered that the views of the Town Council were interesting, bearing in mind the economic benefits the stone industry had brought to the island over the years.

68.18 Having had an opportunity to consider the application before them and hear all the evidence and debate for and against the proposal, some members who had not

attended the site visit on 30 May 2014 considered that they still did not have sufficient knowledge to be able to come to a decision and chose to take no part in the vote.

68.19 Whilst the Committee expressed their reservations at the principle of being asked to determine retrospective planning applications, on being put to the vote, it was decided that planning permission should be granted on the grounds that the application accorded with the provisions of the Development Plan and on planning grounds in order to regulate that practice which had taken place and to best enhance and improve the environment and ecology of that area.

68.20 At the request of Members, officers agreed to write to the applicant encouraging it to contact officers in the future before any works were carried out.

Resolved

69. That planning permission be granted, subject to the conditions set out in Section 8 of the Head of Economy's report and taking into account the provisions of the Update Sheet, as appended to these minutes.

Reason for Decision

70. As summarised in paragraphs 6.42 to 6.45 of the Head of Economy's report.

Rights of Way Matter

Proposed Definitive Map and Statement Modification Order – Footpath 111, Marnhull

71.1 The Committee considered a report by the Director for Environment and the Economy proposing to modify the definitive map and statement of rights of way to correct the recorded route of Footpath 111 Marnhull, between Mill Lane and Musbury Lane.

71.2 With the aid of a visual presentation, officers explained the background to this case. The Committee were advised about how this drafting error anomaly had arisen, how it had come to light and what steps were being taken to address the matter. Analysis of the documentary and user evidence relating to the route was set out in the report, together with the analysis of evidence or representations both in support and against the proposal which had resulted from the consultation exercise into it.

71.3 Accordingly, members were being asked to decide whether:-

- A right of way not shown in the definitive map and statement subsisted or was reasonably alleged to subsist (in the respect of the proposed route C – F – D – E) as this route was not currently recorded with public rights.
- There was no public right of way over land shown in the map and statement as a highway of any description (in respect of the route shown A – B).

71.4 Officers considered that the documentary evidence supported the proposed modification very strongly. However if members were not satisfied that the documentary evidence showed, on balance, that a public footpath exists along the proposed route C – F – D – E, officers advised that they should consider whether the documentary evidence, in conjunction with the user evidence constituted an inferred dedication, or whether the user evidence alone was sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

71.5 The Committee considered that, on balance, a presumed dedication under Section 31 of the Highways Act 1980 was considered to be satisfied, with 20 or more years use of the way by the public. Therefore there was, on balance, sufficient evidence to demonstrate that public rights existed along the proposed route and not on the recorded route and therefore an order should be made.

Resolved

72.1 That an Order be published to modify the Definitive Map and Statement of Rights of Way to correct the route of Footpath 111, Marnhull from the recorded route as shown A – B to that shown C – F – D – E on Drawing 14/04/1 (Appendix 1) in the Director's report.

72.2 If the Order was unopposed, or if any objections were withdrawn, it be confirmed by the County Council without further reference to the Committee.

Reasons for Decision

73.1 The available evidence showed, on balance, that the recorded route of Footpath 111, Marnhull required modification as described.

73.2 The evidence showed, on balance, that the correct route of Footpath 111, Marnhull was as proposed. Accordingly, in the absence of objections the County Council could itself confirm the Order without submission to the Planning Inspectorate.

Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the Corporate Plan objectives of:

Enabling Economic Growth

- Ensure good management of our environmental and historic assets and heritage

Health, Wellbeing and Safeguarding

- Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset
- Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live
- Enable people to live in safe, healthy and accessible environments and communities

Questions

74. No questions were asked by members under Standing Order 20(2).

Meeting duration: 10:00am – 12.40 pm

Update Sheet – Regulatory Committee - 18 December 2014

Minutes 65-67

Navitus Bay Wind Park – Update and Turbine Mitigation Option

Summary of late comments: None.

Corrections/amendments to main body of report:

Amend paragraphs 3.2 and 3.3 (factual corrections):

- 3.2 On 5 November 2014, the Applicant published its response a document entitled Response to Deadline III - Appendix 43 which, ~~While~~ maintaining its original position and reasserting its view that the significant benefits of the Project will outweigh the identified adverse impacts, ~~the Applicant has~~ stated that:

“In the event that the Secretary of State decides that the proposal does not strike the right balance between benefits and impacts, the Applicant believes that it may assist the Secretary of State to at least have available the option to reduce the number of turbines, removing those closest to terrestrial viewpoints”.

- 3.3 ~~The Applicant could have replied simply ‘yes’ or ‘no’ to the question but instead chose to present~~ In effect, at this early stage in the Examination the Applicant has introduced a fallback position which ~~they have~~ it has called the Turbine Area Mitigation Option. The press has simply dubbed it ‘Plan B’.

Corrections/amendments to planning conditions: None.

Corrections/amendments to Appendices: None.

Change to recommendation:

The Turbine Area Mitigation Option has raised some complex issues which have involved extensive discussions with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee. At its meeting on 17 December 2014 Cabinet agreed a revised resolution from that recommended in the joint Cabinet / Regulatory Committee Report.

It is recommended that the Committee agrees a revised resolution from that originally proposed in the report to reflect that of Cabinet, in the interests of presenting a consistent approach.

Cabinet – Draft Resolution:

‘Resolved:

2. That the position of the County Council be reiterated, that it is opposed to wind farm development in the allocated zone.
3. That the Turbine Mitigation Option put forward by the applicant raises significant issues as to the adequacy of public consultation and the examining authority should therefore consider carefully whether the applicant should be required to submit the mitigation option as a fresh application.

4. That whilst the County Council recognises that the Turbine Mitigation Option appears to have less adverse impact off-shore, it would have the same on-shore impact.
5. That the final wording of the response to the Examining Authority's question be delegated to the Head of Economy, after consultation with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee.'

Minutes 68 - 70

WP/14/00041/DCC – Retention and Infilling of Material, Restoration of Land and Relocation of Permissive Footpath at Disused Railway Cutting at land to the south of Park Road, Easton, Portland

Summary of late comments:

Three additional letters have been received from local residents (two identical) noting the following:

- Unable to attend meeting but have been involved from start and wish to summarise concerns.
- Applicant asked path be considered as a permissive path when in fact used by public since 1970s and this supported by over 50 people in application to Rights of Way.
- Application says work carried out to benefit habitat of small blue butterflies. Original dumping obliterated many species of flora and fauna.
- Essential nature of path is that of a sunken area creating unique eco-climate.
- Applicant poured other material over sides of cutting since original incident causing further destruction to environment.
- Local people not consulted prior to any action taking place.
- Question companies general record on acting without appropriate consent and community replies on county and district councils to uphold laws and regulations.
- Officer's report acknowledged path already degraded near new houses. This earlier loss of path was not subject to any consultation with local the community. Accordingly that loss should not be used to support further loss of path now.
- Path been blocked by large stones since incident and despite requests to County Council they are still there. Consequently path has not been open for 15 months.
- Dorset CC risks being brought into disrepute by favouring business over public claim that right of way been blocked for 18 months.
- Obstruction of path is illegal and consider have enough evidence to substantiate this in court of law.
- My understanding is applicant owns mineral rights not land itself so not entitled to undertake actions associated with this development.
- Open space being eroded as result of proposal.
- DCC would be wrong in adopting recommendation as printed without considering opening up whole path to benefit of community and visitors alike.
- By refusing to acknowledge statements of many residents council acting against wishes of people and therefore bring DCC into disrepute.

Corrections/amendments to main body of report: None.

Corrections/amendments to planning conditions:

The applicant has expressed a concern regarding the 6 month compliance time set out in proposed Condition 5 (Capping and Seeding of Overburden). It has been suggested that the capping should take place in one operation after all other earthworks have been completed. These earthworks should be undertaken when the ground is dry, after the bird nesting

season and when reptiles are not hibernating. The earthworks should therefore not start until August/September.

The Council's Head of Natural Environment agrees that the work should be held off until after the bird nesting season. It is therefore proposed to change the wording of proposed Condition 5 to refer to 9 months instead of 6 months.

The support of the archaeological officer made reference to securing certain features by condition. Only the iron fence posts are located within the application site. It is proposed to add a new condition to secure their retention.

Corrections/amendments to Appendices: None.

Recommendation:

Grant planning permission subject to conditions set out in the report as modified below:

5. Capping and Seeding of Overburden

Within 9 months of the date of this permission the site (excluding the proposed path) shall be capped to a depth of 0.5 metres with free draining limestone scalplings such as Portland Slat. In the event that any material other than Portland Slat is to be used the prior agreement in writing of the mineral planning authority shall be obtained for the use of such material. In that situation only the agreed substitute material shall be used.

Reason

To protect the ecological value of the surrounding area and maximise opportunity for the creation of habitat of ecological value having regard to Policy DM1 (Key Criteria for Sustainable Minerals Development) of the adopted Bournemouth Dorset and Poole Minerals Strategy.

11. Retention of Iron Fencing Posts

The three iron fencing posts which are located on the southwest boundary of the application site shall be retained.

Reason

To protect a feature recognised as a heritage asset having regard to Policy DM7 The Historic Environment of the adopted Bournemouth, Dorset and Poole Minerals Strategy.
