

Report to the Director for the Environment and the Economy

Dorset County Council



Date of Report	27 February 2015
Subject of Report	Status and extent of public highway rights at Mill Lane, Chideock
Summary	This report considers the evidence of highway rights at Mill Lane Chideock and concludes, on balance, the status and extent of rights with reference to map 15/08 attached.
Appendices	Appendix 1 – Drawing 15/08 Appendix 2 – Extracts from Key Documents: <ul style="list-style-type: none">• Map of Chideock 1838;• Chideock Tithe Apportionment Plan 1843;• Map of Chideock 1852;• Finance Act Plan 1910;• Rights of Way Act 1932 (The Chideock Estate) map and declaration;• Ordnance Survey Drawing 1806 – 07;• Ordnance Survey One Inch First Series 1811;• Ordnance Survey 6 inch 1887;• Ordnance Survey 6 inch 1887 (Enlarged);• Ordnance Survey 25 Inch 1888; Ordnance Survey Revised One Inch 1898;• Ordnance Survey Sheet 177 – Taunton and Lyme Regis – 1960;• Caravan Site Planning Application 1951;• Planning Application, Mill Lane, Chideock 1930;

	<ul style="list-style-type: none">• List of Streets Plan 1974;• Current List of Streets Plan.
Report Originators and Contacts	Name: Sarah Meggs and Phil Hobson Tel: (01305) 225104 and (01305) 221562 Email: s.l.meggs@dorsetcc.gov.uk and p.c.hobson@dorsetcc.gov.uk

1 **Background**

- 1.2 The extent of the County Road known as Mill Lane in Chideock and vehicular use of the adjoining public bridleway (Bridleway 18, Chideock) has been in dispute since at least August 2000. This is evidenced by a letter dated 22 August from Mr R Webb, at that time the Senior Rights of Way Officer, to Mr I St Pierre, then the Clerk to the Chideock Parish Council.
- 1.3 The letter acknowledges the concerns and complaints from residents in respect of vehicular use of the bridleway and refers to a meeting that took place on 8 August 2000 from which it was agreed to attempt to reduce unauthorised vehicular use by placing signs at a number of locations and the provision of a passing place for vehicles.
- 1.4 Since that time there has been continued correspondence on the subject.
- 1.5 An application for planning permission to facilitate reorganisation of the Golden Cap Holiday Park was submitted to West Dorset District Council in March 2012. The application included reference to vehicular access along Mill Lane and was objected to by the Parish Council. Information exchanged in relation to the planning process and subsequently has culminated in the present concerns, which relate to the extent or termination point of the adopted County Road.
- 1.6 Chideock Parish Council is of the opinion that the extent of the public road corresponds with the blue line shown on the Highways Inspected Layer on Dorset Explorer and shown as point A on Drawing 15/08.
- 1.7 Officers within Dorset County Council have expressed the view that the termination point of the publicly maintainable highway, Mill Lane, corresponds with that depicted on the plan accompanying the List of Streets, shown as point E.
- 1.8 In view of the ongoing dispute about the information shown on the Council's List of Streets for the end of Mill Lane, this report considers the available evidence to establish, on balance, what the status and extent of the public rights are. Save as referred to in paragraphs 3.55 to 3.57 and 4.10, this report does not consider the extent of private rights that may exist over Mill Lane by virtue of ownership, presumed ownership or otherwise.
- 1.9 The documentary evidence analysis has been completed by a Rights of Way Officer from the Definitive Map Team with considerable experience of interpretation of documentary evidence for the purpose of investigating applications for the modification of the Definitive Map and Statement.

2 **Law**

- 2.1 It is an established principle that "once a highway always a highway". This means that if highway rights existed in the past, they continue to exist until removed by legal order or enactment.

Highways Act 1980

- 2.2 Section 32 provides that any map, plan or history of the locality or other relevant document which is tendered in evidence should be considered and

given such weight as considered justified by the circumstances, including the antiquity of the document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

- 2.3 Section 36(6): The council of every county is required to make and keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.
- 2.3.1 There is no statutory process by which the List of Streets was composed and is amended and up dated. The actual process used when the list was first compiled is not known as records are scarce. This can be contrasted with the extensive consultation, notification and inquiry processes used to create and amend the Definitive Map and Statement. As a consequence, and with reference to section 32, the detail in the List of Streets is often inadequate, can be challenged and does not, alone, carry much weight in determining the extent and status of a route shown. The associated maps are important supporting evidence as to highway status and extent but, in the case of dispute, it is important to understand that other records should be consulted.

Finance Act 1910

- 2.4 The Finance Act 1910 required the Commissioners of the 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.
- 2.5 Public roads were generally excluded from the valuation.
- 2.6 In a decided case a Finance Act map and Schedule was described as “most material evidence” ...“the fact that the [land in question in that case] was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the [land in question] was at that time thought to be in public ownership and vested in and maintainable by the ... highway authority.

Rights of Way Act 1932

- 2.7 The **Rights of Way Act 1932** allowed landowners to make statutory declarations acknowledging the existence of public rights of way and declaring that they had no intention of dedicating any further public rights of way over their land, thereby preventing the accrual of any ‘new’ public rights of way.

Tithe Commutation Act 1836

- 2.8 The Tithe Commutation Act 1836 converted tithes into a fixed money rent. The associated documents are concerned solely with identifying titheable land and were not made for the purpose of establishing or recording public rights of way. The maps are good evidence of the topography of an area at the time and can be good supporting evidence of the existence of public rights of way.

Natural Environment and Rural Communities Act (NERC) 2006

- 2.9 Section 67 of NERC 2006 extinguished certain public rights of way for mechanically propelled vehicles. Where rights are extinguished the resulting right of way is a Restricted Byway.

3 Documentary Evidence

Map of Chideock

- 3.1 **The Map of Chideock 1838** appears, in all probability, to be a pre-cursor to the **Tithe Apportionment Plan 1843** and clearly defines Mill Lane from its junction with Duck Street leading south-easterly then southerly. It is defined by two parallel solid lines to point C, as shown on Drawing 15/08. At point C there is a solid line across the route that may represent a gate. The route continues southerly from this point being defined by two parallel broken lines suggesting a field boundary was present to the eastern side, the western side being open.
- 3.2 There is no field boundary or other distinguishing feature in the vicinity of point E, the point at which it is believed the publicly maintained road, Mill Lane, terminates.

Tithe Apportionment Plan

- 3.3 The **Chideock Tithe Apportionment Plan 1843** depicts Mill Lane. It is shaded light brown and not apportioned, this being generally regarded as indicative of the form in which a public highway, possibly a public road, was shown. The shading extends as far as point C, as shown on drawing 15/08, approximate OS GR 4233 - 9231 there is no depiction of a path or way beyond this point.
- 3.4 The Altered Apportionment Plan 1922 uses a 25 Inch Ordnance Survey base map and therefore, with the exception of the tithe apportionment numbers, shows exactly the same detail as the corresponding Ordnance Survey sheets which are discussed from paragraph 3.27 below.

Map of Chideock

- 3.5 The **1852 map of Chideock** is described as showing the boundaries from the maps of 1813 and 1838 and the hedges destroyed since, the latter being defined by a squiggly line.
- 3.6 The depiction of Mill Lane on this map corresponds with the depiction of it on the map of 1838, it being shaded in light brown and defined by two parallel solid lines that continue as far as point C, where a solid line through the route may indicate the presence of a gate.
- 3.7 From point C the route continues in a southerly direction through point E, being defined by a solid line to the east (a field boundary) and a broken line to the west, suggesting that on this side it was unfenced.

Map of Chideock

- 3.8 An undated map believed to be from the 19thC bears a resemblance to the **Tithe Apportionment Plan of 1843** although it does contain some minor differences and is of a different style. The map is uncoloured save for any buildings, which are generally shaded in red.
- 3.9 Mill Lane is clearly shown, being defined by two parallel solid lines as far as point C, at which point the solid 'end' of the route indicates that here it may have been gated, fenced or hedged. This parcel of land has no apportionment or parcel number and there is no indication that the route continued beyond this point.

Finance Act 1910

- 3.10 The **1910 Finance Act Plan**, which uses a second edition Ordnance Survey 25 Inch Map, clearly indicates, with the exception of a small section discussed in paragraph 3.11, that Mill Lane was excluded from valuation to approximately point A at OS GR 4233 - 9235. This is indicated through the shading in red to either side of the route and the lack of any associated hereditament number within the resulting parcel of land.
- 3.11 The northern part of Mill Lane is bordered to the west and east by separate parts of Hereditaments 96 and 154. Both Mill Lane and Sea Lane, a recorded public road that is located to the west of and runs parallel to Mill Lane, are shown to be excluded from either of the separated parts of hereditament 154. However, it is not clear whether Sea Lane is included or excluded within part of Hereditament 96 and although Mill Lane, where it abuts Hereditament 96 and 154, is shown to have been excluded, the small section located between the separated parts of Hereditament 96, located to the east and west of Mill Lane, is shown to have been included within Hereditament 96.
- 3.12 The accompanying **Field Book** describes Hereditament 96 as being "approached by good roads" and Hereditament 154 is similarly described as being connected "by good roads". In both instances this, in all probability, relates to both Sea Lane and Mill Lane. In respect of Hereditament 96 £5 was granted for public rights of way or user, no deductions were granted in respect of Hereditament 154.
- 3.13 Sea Lane is shown to continue south towards Seatown, initially it appears unclear whether this section of the road is excluded from or included within Hereditament 139. It also appears unclear as to whether the southern extension of Mill Lane within Hereditament 139 is included or excluded. This hereditament comprises a large area of land and a deduction of £50 was granted in respect of public rights of way or user. However, due to its physical size and the fact that there are a number of routes, some of which are recorded public rights of way, passing through it, it is difficult to determine which of these routes, if any, were subject to this deduction.
- 3.14 Although it is difficult to determine the location of any of the public rights of way within Hereditament 139 it should be noted that it also contains Sea Lane, a public carriageway recorded on the List of Streets as the C90. Sea Lane passes through Seatown Farm and leads to the coast adjacent the Anchor Inn public house at Seatown.

- 3.15 Of particular interest is that whilst this public road, where it passes through Hereditament 139, has the appearance of having been included for the purpose of valuation, it is shown to have been excluded at its southern termination point, Seatown, adjacent Hereditaments 36, 139, 182, 183 and 203. This conclusion appears reasonable, as if it had been included within Hereditament 139, the red shading on the eastern side of Sea Lane at this point would be superfluous without a 'bar' or 'dash' across the road at the point at which the red shading ends.
- 3.16 Applying this logic to the remainder of the road it appears reasonable to suggest that the northern section of Sea Lane was also excluded as, if it was included within Hereditament 96, it would be expected that the shading to the western side of the road, in the south east corner of Ordnance Survey parcel number 353, would have been within the road itself or a 'bar' or 'dash' across the road would be shown at the point the red shading ends.
- 3.17 Having established that in all probability Sea Lane was excluded from its adjacent hereditaments throughout its length, albeit not being depicted in the conventional way, for example, by means of bracing across the road, it seems reasonable to apply the same reasoning to the depiction of Mill Lane on the same plan as well.
- 3.18 As has been discussed earlier the northern section of Mill Lane is, for the most part, clearly excluded from valuation, the exception being the part adjacent the separate parts of Hereditament 96. However, had this part of the road been included within this hereditament it would be expected that this would have been indicated by 'bars' or 'dashes' drawn across the road.
- 3.19 Mill Lane is clearly excluded once again where it passes between Hereditament 154, located to the west, and Hereditaments 96 and 139 to the east. As before, had the road been included within 139 it would be expected that the red shading along the northern boundary of 139 within Ordnance Survey parcel number 342 would have continued easterly across the road and then southerly along it.
- 3.20 As the exclusion of a route on the Finance Act plan is regarded as being indicative of it being a public highway, probably a public carriageway, and as the entire length of Sea Lane is recorded as such, this suggests that the above interpretation of the map is, on balance, correct. Consequently, in respect of Mill Lane and with regard to the Finance Act evidence it appears reasonable to suggest that its exclusion indicates that it was regarded as a public highway, probably a public carriageway. In addition, the fact that there is no line across the road at point E suggests that it continued beyond this point southerly towards Seatown Mill.

Rights of Way Act 1932

- 3.21 The land in question had been part of the **Weld Estate (The Chideock Estate)** and on **19 July 1934** the owner, **Mr H J G Weld**, made a statutory declaration under the **Rights of Way Act 1932** the declaration being accompanied by a **6 inch Ordnance Survey Map** upon which those ways acknowledged by the owner to be public highways were drawn.

- 3.22 The acknowledged public highways are drawn in green ink, there is no accompanying key but the statement attached to the plan states the following; ***“I Humphrey Joseph Giles Weld being the owner of the whole of the land edged in pink on the attached plan, with the exception of certain small properties which are not material for this purpose, hereby admit that the ways shewn in green ink on this plan are the only ways dedicated to the public as highways”.***
- 3.23 Chideock and Seatown, including the public road Mill Lane and its southerly extension towards Seatown, are included within the Chideock Estate as delineated on the plan. The northerly route from Seatown via the Mill to Mill Lane is shown coloured green extending as far as point D as shown on Drawing 15/08. The fact that it is coloured green indicates that it was one of the ways acknowledged by the owner to have been dedicated to the public as a highway.
- 3.24 It is not entirely clear from the statement accompanying the plan what status the acknowledged public highways were. However, in a letter addressed to the **Clerk to the Dorset County Council** of **22 May 1934** from **Kitson and Trotman Solicitors**, acting on behalf of the **Weld Estate**, it is stated that ***“we have indicated in green ink the ways which it is admitted have been dedicated as highways. Numerous other footpaths are marked on the Ordnance Map but it is not admitted that any, other than those marked in green ink on the Map, have been dedicated as highways. Some have been used by the Public by permission of the owner or occupiers of the land and some of the paths indicated have been used by labourers and others working on the estate”.***
- 3.25 The reference to “numerous other footpaths” may suggest that the estate considered all of the ways acknowledged as being public highways were all footpaths. However, it remains the case that nothing within the original declaration or the renewals made in 1940, 1944, 1948 and 1952 clarify the status of the ways other than to acknowledge they were dedicated to the public as highways.
- 3.26 It is reasonable to assume that the dedication of these highways was based on the estates knowledge and reputation of them. Therefore, it is considered that this declaration provides conclusive evidence to the fact that the **Weld Estate** admitted the existence or dedication of a public highway extending from Seatown in a northerly direction and terminating at or in the vicinity of point D as shown on Drawing 15/08

Ordnance Survey Maps

- 3.27 The **Ordnance Survey Drawing 1806-07 at a scale of 2 inches to 1 mile** was used in preparation for the publication of the **First Series 1 inch to 1 Mile Map 1811**. Being of a slightly larger scale the drawing has a little more detail but both maps are generally restricted in their detail due to their scale. However, both maps depict a route defined by two solid parallel lines that would generally correspond to that of Mill Lane (Sea Lane is also depicted on both maps). The southern part of the depicted route follows a different course to that shown on later maps that correspond to the present route, although this may be due to it having originally followed the 100 foot contour.

- 3.28 Both maps show the defined route terminating at or about the same point. The greater detail of the earlier drawing shows that this was at a field boundary. Comparison to later maps and in particular the **First Edition 25 Inch Map 1889** suggests that this would equate to approximately point E.
- 3.29 The **First Edition 6 inch Map 1887 and 25 inch Map 1888** both depict Mill Lane, which now follows the same route as it does today. They also show Sea Lane. Both of these roads are defined in the same manner by two parallel solid lines. Mill Lane continues as far as point E where the presence of a solid line across the route probably indicates the location of a gate. The route is shown to continue southerly from this point towards Seatown Mill, its extent initially being defined by a broken line to the west and a solid line, probably indicating a hedge, to the eastern boundary. The hedge turns to the southeast whilst the route, now defined by two parallel broken lines, continues in a southerly direction.
- 3.30 Of particular relevance is the fact that both the 6 inch and the 25 inch maps show the eastern boundary of both Sea Lane and Mill Lane to be heavily shaded, this shading being repeated on both the **Second Edition 6 Inch Map 1904 and 25 Inch Map 1903**. In respect of Mill Lane this shading terminates at approximately point E.
- 3.31 The significance of shading in this manner is that from **1884** it had been the practice of the Ordnance Survey to classify roads by administrative status by which all metalled public roads for wheeled traffic were to be shaded to one side, in practice this is applied to the roads' eastern or southern sides. By **1896** roads on Ordnance Survey maps were to be classified as first or second class according to whether they were Main or District roads, other roads were to be classed as second class if they were metalled and kept in good repair. Both first and second class roads are shown on published maps in the same way, by shading on one side. Third class metalled and un-metalled roads are shown without shading.
- 3.32 The **Ordnance Survey Revised One Inch Map 1898** depicts the route of Mill Lane in the same manner as the 6 and 25 Inch Maps. It also shows the position of the 100 foot contour to the west of the road, which it is thought the original course of the road may have followed.
- 3.33 The **Ordnance Survey 1:2500 (25 Inch) County Series Map 1929** also depicts Mill Lane in the same manner as the earlier 6 and 25 Inch Maps although the eastern side is no longer shaded as this practice was abolished on the 1:2500 maps in 1912. The route is shown to continue towards Seatown Mill, being defined for the main part by two parallel broken lines. The **Ordnance Survey 1:2500 Plan 1961** is very similar although the possible gate at point D, which was still in place on the 1929 map, has now been removed and the continuation of the route towards Seatown Mill is now enclosed, fenced or hedged, on both sides.
- 3.34 **The Ordnance Survey 1:2500 Map 1959** depicts the route in a similar manner to the **1929 1:2500 Map**. There is no gate at point E and the route beyond this point is defined by parallel broken lines which, in conjunction with the evidence provided from the 1961 plan, suggest that the route from E towards Seatown Mill was probably enclosed between 1959 and 1961.

- 3.35 **The Ordnance Survey 1:10,560 (6 Inch Map) 1968** depicts Mill Lane as a through route to Seatown, being defined by two parallel solid lines, suggesting that by this time the route was fully enclosed throughout its length. The **Ordnance Survey 1:10,000 Map 1992** shows the route in a similar manner but also depicts the caravan park located to the east of Mill Lane.
- 3.36 The later **Ordnance Survey 1 Inch Maps, New Popular Edition 1945 and Sheet 177 1960**, also depict Mill Lane as a through route, it being clearly defined on both and depicted in the same style as other routes shown and known to be public roads.
- 3.37 The evidence provided by the **Ordnance Survey Maps** provides good support to the conclusions reached in respect of the **Finance Act 1910**. In particular the heavy shading shown on the earlier 6 and 25 Inch Maps suggests that Mill Lane was regarded as a public highway, probably a public carriageway. Although private carriage roads may also be depicted in this manner, in light of other supporting evidence and in the knowledge that both Sea Lane and Mill Lane are recorded on the List of Streets as third class and unclassified public roads, it appears reasonable to conclude that in this instance the shading of the routes on the earlier Ordnance Survey maps indicates that both Sea Lane and Mill Lane were regarded as public carriageways.
- 3.38 In respect of Mill Lane this suggests that the road did continue at least as far as point E and may well have continued to Seatown as the fact it was not shaded beyond point E does not necessarily mean that it was not a public road (see paragraph 3.31 above).

Planning Applications

- 3.39 There have been a number of planning applications involving land and property along Mill Lane. Of particular interest are those from 1951 in respect of a licence to use the land identified as Ordnance Survey Parcel Number 388 (O.S. 388) as a temporary caravan site, which was renewing a licence permitted the previous year. By reference to the First Edition 25 Inch Map O.S. 388 can be identified as the land now occupied by the existing caravan site. Permission was granted and no issues appear to have been raised as to how the site was to be accessed which, it seems reasonable to assume, was by means of an entrance at or in close proximity to point B.
- 3.40 There are two other planning application plans, the first dating from 1930, concerning improvements to the drainage system of a property in Mill Lane, the second from 1934 concerning the conversion of an existing building into a "summer cottage" in Mill Lane. Both of the accompanying plans show Mill Lane, each plan being annotated, that of 1930 "From Chideock" and "To Seatown" that of 1934 "from Seatown" and "to Chideock".
- 3.41 Although the annotation does not provide any strong evidence as to the extent of the public highway Mill Lane, the fact that they describe it as leading to or from Seatown suggests that at that time the road was regarded as a through route leading to Seatown.

List of Streets

- 3.42 **Section 36(6) of the Highways Act 1980** requires every highway authority to make, and keep up-to-date a **list of all streets** (LOS) maintainable at public expense, the LOS does not list **all** public highways, only those which are maintainable at the public expense. Mill Lane is recorded on the current LOS and has been since local government reorganisation took place in 1974.
- 3.43 The schedule of roads for April 1974 records Mill Lane as an unclassified road the D731 describing it as a paved road 0.41 miles (0.07km) in length. The grid references are defined as (SY) 422928 – 423923. The current schedule records the route as the D10731, providing exactly the same information in respect of the grid references and length of paved road. Dorset County Council records do not record a date of adoption although this road would have been handed over by the Bridport Rural District Council.
- 3.44 The map accompanying the LOS depicts Mill Lane shaded in blue and extending as far as point E. This provides evidence to the conclusion that the publicly maintainable extent of the road corresponds with point E. However, this does not necessarily mean that the remainder of the route south of point E was not a public highway only that if it was it may not have been maintainable at the public expense.
- 3.45 Sea Lane is also shown on the map, being shaded brown, and shown to extend as far as Seatown. In 1974 the schedule recorded it as a third class road, the C90, extending southerly for 0.74 miles from its junction with the A35 in Chideock to Seatown. Of particular note is that the grid references were recorded as (SY) 422928 – 420918. The current List of Streets also records the route as the C90 extending 0.74 miles from the A35 Chideock to Seatown. However, the grid references show a slight variation to the original now being recorded as (SY) 421928 – 420917.
- 3.46 It should be noted that 6 figure grid references are only accurate to 100 metres, that is to say the commencement and termination points of the above roads could fall anywhere within a 100 metre square. The fact that both Mill Lane and Sea Lane were initially provided with the same commencement point 422928 provides a good example as to the limited accuracy of 6 figure grid references as they clearly do not commence from the same point, Mill Lane, branching out of the C90 south of the latter's junction with the A35.

Public Path Creation Order 1996

- 3.47 An Order creating a public bridleway and made **under Section 26 of the Highways Act 1980** in 1996 was confirmed by the West Dorset District Council in January 1997. The effect of the Order was to create a public bridleway ***“following the concrete driveway from the county road at grid reference 4205-9184 (point BS), east for 118 metres to grid reference 4217-9185 (point AN), then northeast for 235 metres to grid reference 4234-9200 (point BT), then north for 320 metres to the start of the county road (Mill Lane) at grid reference 4234-9232 (point BU)”***.
- 3.48 It should be noted that 8 figure grid references, whilst being more accurate than 6 figure references are still only accurate to a 10 metre square.
- 3.49 Although the route is described as terminating at the ***“start of the county road (Mill Lane) at grid reference 4234-9232 (point BU)”*** it is clear from the evidence already examined that the publicly maintained county road (Mill

Lane) terminated approximately 125 metres south of this point (point E on Drawing 15/08).

- 3.50 It appears that the Order may have been made with reference to the grid reference for the termination point of Mill Lane as contained within the List of Streets with no reference being made to the accompanying plan or any other available documents. Although the Order is clear as to the course and extent of the newly created bridleway it does appear that an error or assumption has led to the creation of a bridleway over part of an existing publicly maintainable highway, a public carriageway, Mill Lane, as shown between points C and E.

Natural Environment and Rural Communities Act (NERC) 2006

- 3.51 Section 67 of the NERC Act 2006 extinguished certain public rights of way for mechanically propelled vehicles.
- 3.52 Section 67(1) extinguished, on commencement, public motor vehicular rights over every highway not already shown on the definitive map and statement, or shown as a footpath, bridleway or restricted byway. In effect this means that public rights of way for mechanically propelled vehicles have been extinguished over every highway not already shown on the definitive map and statement as a byway open to all traffic.
- 3.53 Because section 67(1) explicitly extinguishes public motor vehicular rights over every highway that was not shown on 2nd May 2006 [in England] on the definitive map and statement as a byway open to all traffic, there is a clear presumption that this will be the case unless it can be shown that one or more of the exceptions in subsections 67(2) or 67(3) applies.
- 3.54 Subsection 67(2)(b) provides an exemption where immediately before commencement a route was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense). Part of Mill Lane was, however, shown on the definitive map and statement as a bridleway and that exception is considered not to apply to dual recorded routes.
- 3.55 Subsection 67(5) provides a private right of way for mechanically propelled vehicles for those persons who have a reasonable need for access by mechanically propelled vehicle to land in which they have an interest, in all cases where a public right of way for mechanically propelled vehicles is extinguished under subsection 67(1). This is regardless of whether such a person was actually exercising the public right of way for mechanically propelled vehicles, or able to exercise it. It is also irrelevant that there may be an alternative means of access to the property. The exercise of the public right of way need only have been reasonably necessary for access to any part of the land. The words “reasonably necessary” have their normal, everyday meaning and what is reasonably necessary would depend on the facts of the case.
- 3.56 This private right of way for mechanically propelled vehicles extends to landowners, occupiers and tenants. It will also include lawful visitors to the person who has an interest in the land, including: business, trade or professional visitors; postal or other deliveries; the highway authority and utility companies who have apparatus/equipment along the highway.

3.57 This provision does not create any new rights of way, since the provision of the private right of way is dependent on there being in existence, before the commencement date (2 May 2006), a public right of way for motor vehicles, which was extinguished by sub-section 67(1).

4 Conclusions

4.1 The **Highways Inspected Layer**, as shown on **Dorset Explorer** and on which the **Chideock Parish Council** have based their opinion, shows the extent of the publicly maintainable highway that is actually *physically inspected*. This can, and in this case does, differ to the extent of the *publicly maintainable highway*, which is described on the schedule accompanying the List of Streets and shaded blue on its accompanying plan.

4.2 In effect, the line shown on the **Inspected Layer** does not necessarily relate to the extent of the publicly maintainable highway. Furthermore, as the List of Streets records only those highways maintainable at the public expense any part of a public highway that is *not maintainable* at the public expense will not be recorded upon it.

4.3 The early maps of Chideock, including the **Tithe Apportionment Plan 1843** but excluding **Ordnance Survey** maps, depict Mill Lane in a manner that suggests it was regarded as a public highway, probably a public carriageway. Those that are shaded in the conventional manner, light brown, depict the route extending at least as far as point C.

4.4 On balance, the evidence provided by the **Finance Act 1910** documents suggest that Mill Lane was excluded from valuation, this being indicative of the road being regarded as a public highway, in all probability a public carriageway. The extent of the public road would have been at least as far as point E although there is no compelling evidence to determine that the public road ended at this point, indeed it may have continued further.

4.5 Whilst the declaration made by the **Weld Estate** under the **Rights of Way Act 1932** provides conclusive evidence to the fact that the estate admitted the existence or dedication of a public highway it is not clear what status they believed the acknowledged public highway enjoyed. In respect of its termination point, it is also unclear as to what records, if any, the estate may have consulted in order to conclude that this was at or in the vicinity of point D. Other records examined, at or close to this period of time, such as the **List of Streets** and the **Finance Act 1910** do not support the apparent conclusion.

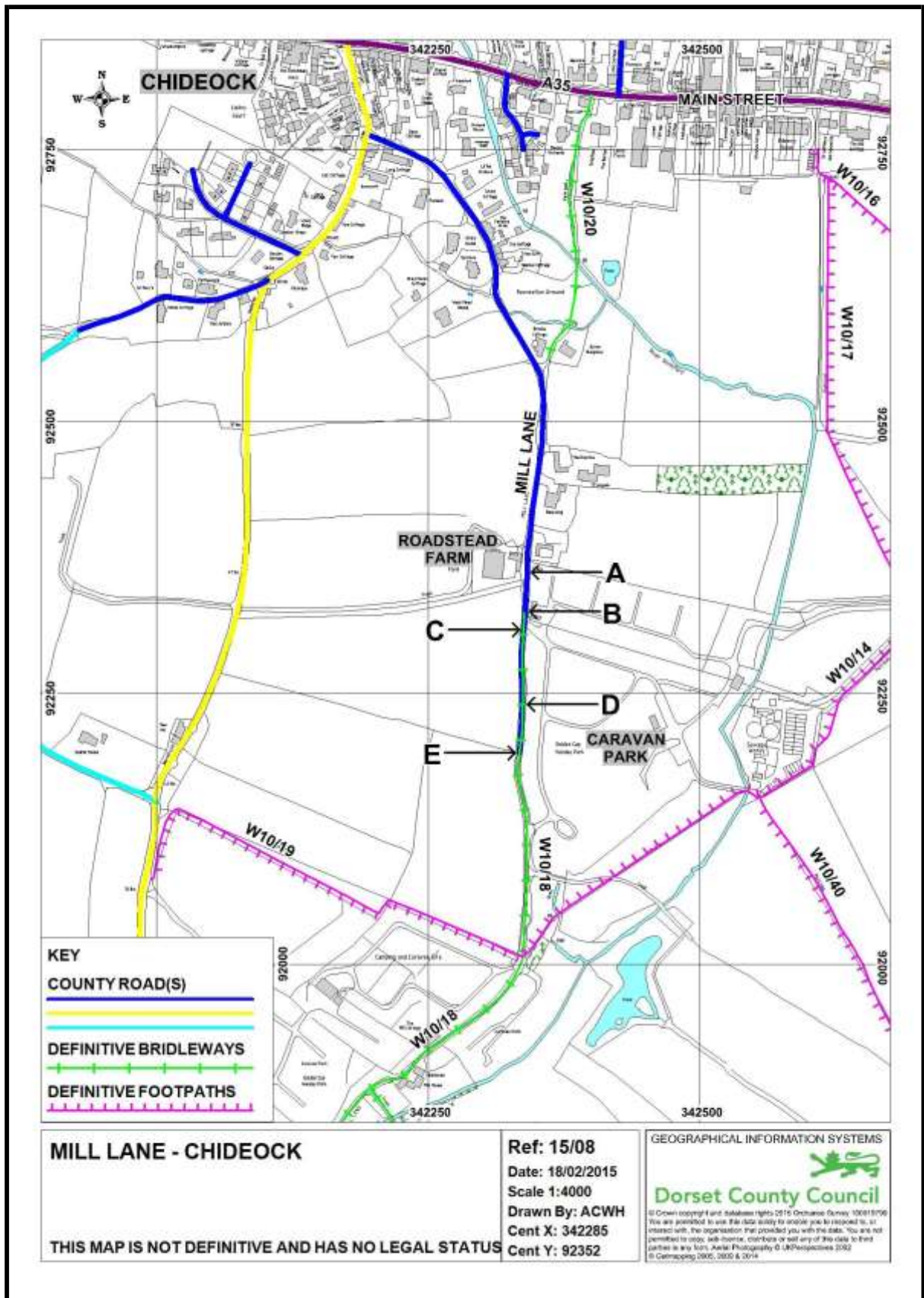
4.6 The **Ordnance Survey Maps** support the conclusions reached in respect of the **Finance Act 1910** evidence. In particular the shading of the route to one side, as shown on the first and second editions of the 6 and 25 inch maps, in conjunction with the other documentary evidence indicates that Mill Lane was regarded as a public carriageway at least as far as point E.

4.7 The conclusions reached in respect of the evidence provided by the **Finance Act 1910** and **Ordnance Survey Maps** are further supported by the route being recorded on the **List of Streets**, the plan from which shows the publicly maintainable highway extending as far as point E.

- 4.8 The creation of a public bridleway in 1997, the effect of which led to that part of it as shown between points B-C-D-E being created over an existing part of a publicly maintainable carriageway, Mill Lane, is not an unknown situation. It is not known what records were consulted in arriving at the termination of the Bridleway at B. A later creation of a lesser highway does not extinguish a pre-existing highway of a higher status. Accordingly, the creation of the public bridleway would have had no effect, at that time, over any existing higher public rights whether or not they had been recorded.
- 4.9 The implementation of the **NERC Act 2006** may, subject to any exemptions that might apply, have led to the extinguishment of any unrecorded mechanically propelled vehicular rights e.g. the route extending southerly from point E towards Seatown. In addition, as the route shown between points B-C-D-E is now 'dual recorded', being recorded on both the **List of Streets** and the **Definitive Map**, the presumption is that it is the Definitive Map that is correct and the mechanically propelled vehicular rights, subject to any exemption, have been extinguished. This would leave a public vehicular route without rights for mechanically propelled vehicles, a restricted byway.
- 4.10 **Subsection 67(5) of NERC** provides for a private mechanically propelled vehicular right extending to landowners, occupiers and tenants. This also includes lawful visitors to the person who has an interest in the land, including: business, trade or professional visitors; postal or other deliveries.
- 4.11 In conclusion, the **Chideock Parish Council's** interpretation of the **Inspected Layer** is correct in the sense that this depicts that part of Mill Lane physically inspected, which extends as far as point A. However, this is not a true representation of the full length of the public vehicular highway. On balance, the extent of Mill Lane that is actually publicly maintainable highway, a public carriageway, is considered to extend as far as point E.
- 4.12 Even if it cannot be demonstrated that exceptions apply to the extinguishment of unrecorded mechanically propelled vehicular rights and also the extinguishment of the dual recorded section of Mill Lane, as shown between points B-C-D-E, a private mechanically propelled vehicular right is preserved for any person who has an interest in any land served by the road including lawful visitors.

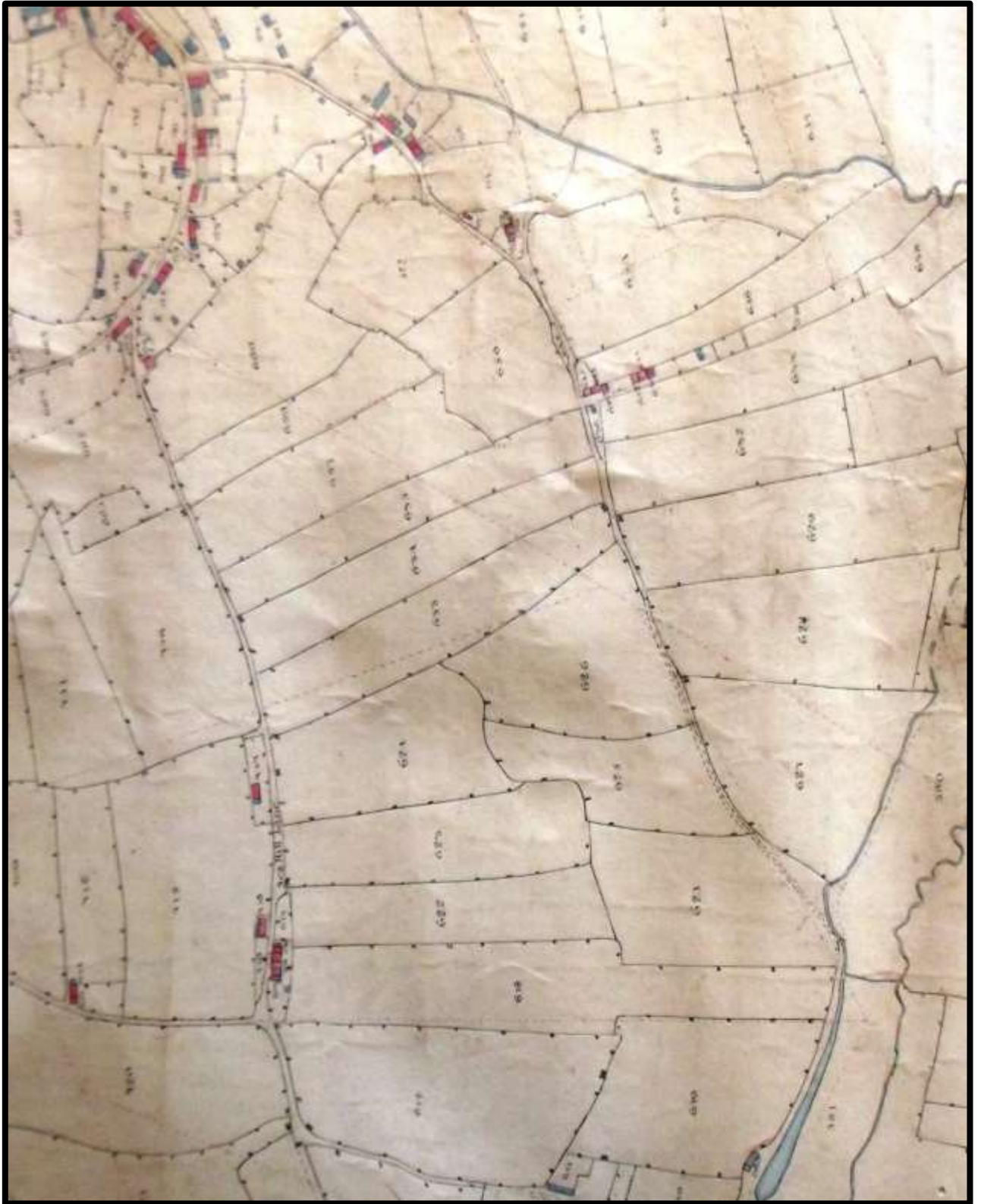
March 2015

Drawing 15/08



Extracts From Key Documents

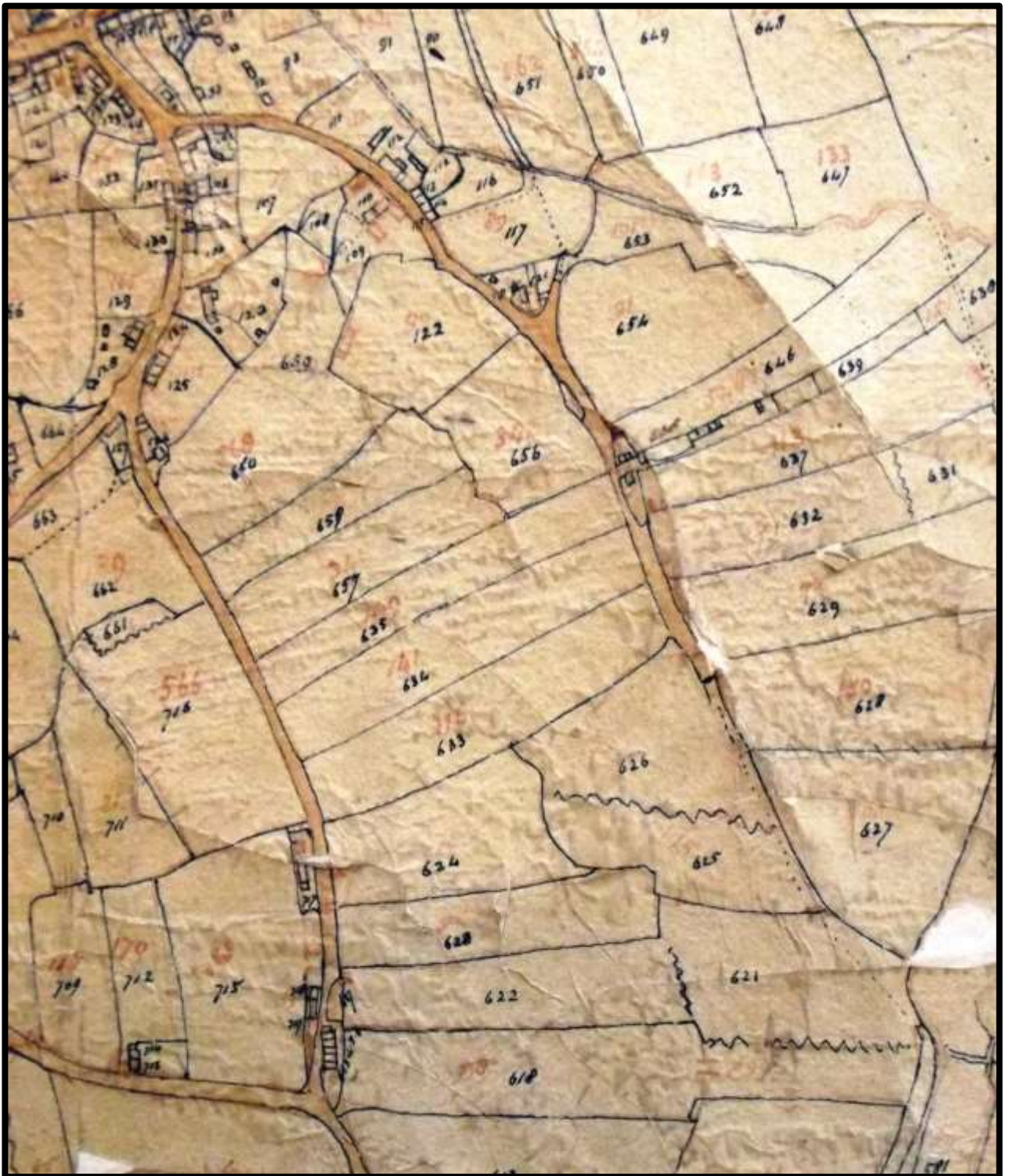
Map of Chideock 1838



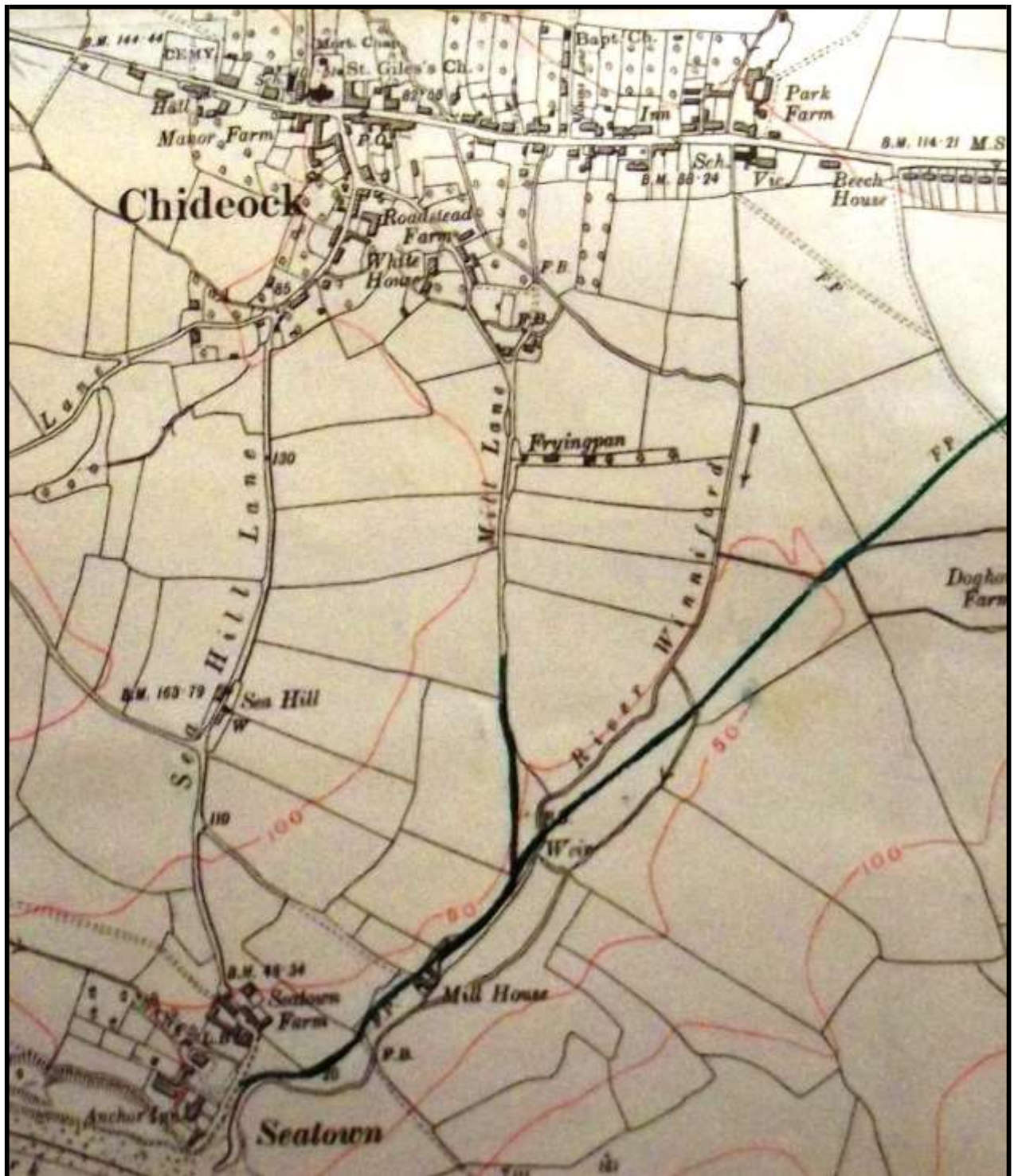
Chideock Tithe Apportionment Plan 1843



Map of Chideock 1852



Rights of Way Act 1932 (The Chideock Estate)



Rights of Way Act 1932

I HUMPHREY JOSEPH GILES WELD being the owner of the whole of the land edged in pink on the attached plan, with the exception of certain small properties which are not material for this purpose, hereby admit that the ways shewn in green ink on this plan are the only ways dedicated to the public as highways.

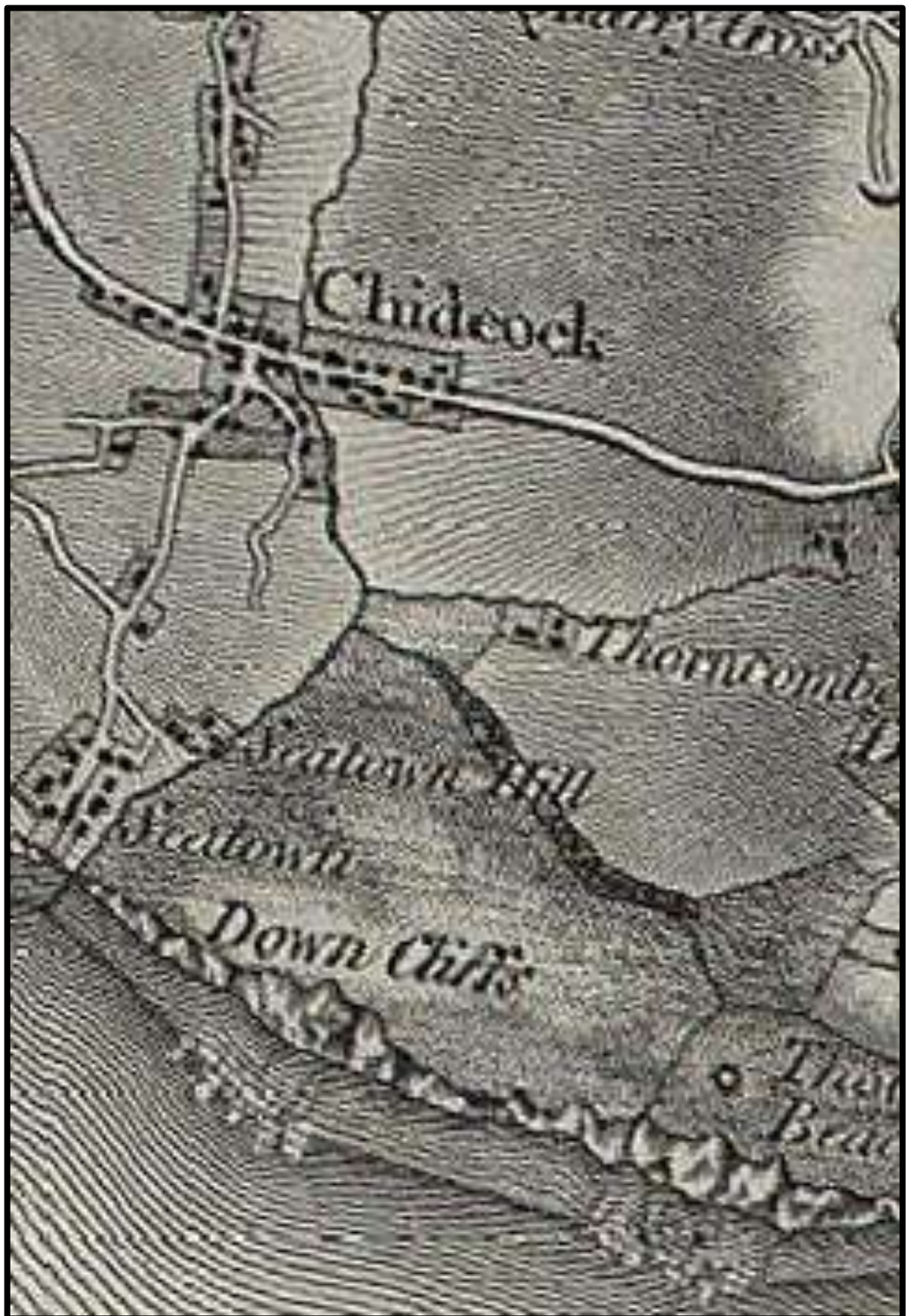
DATED this 19th day of July One thousand nine hundred and thirty four.

H. J. Weld

Ordnance Survey Drawing 1806-07



Ordnance Survey One Inch First Series 1811



Ordnance Survey 6 inch 1887

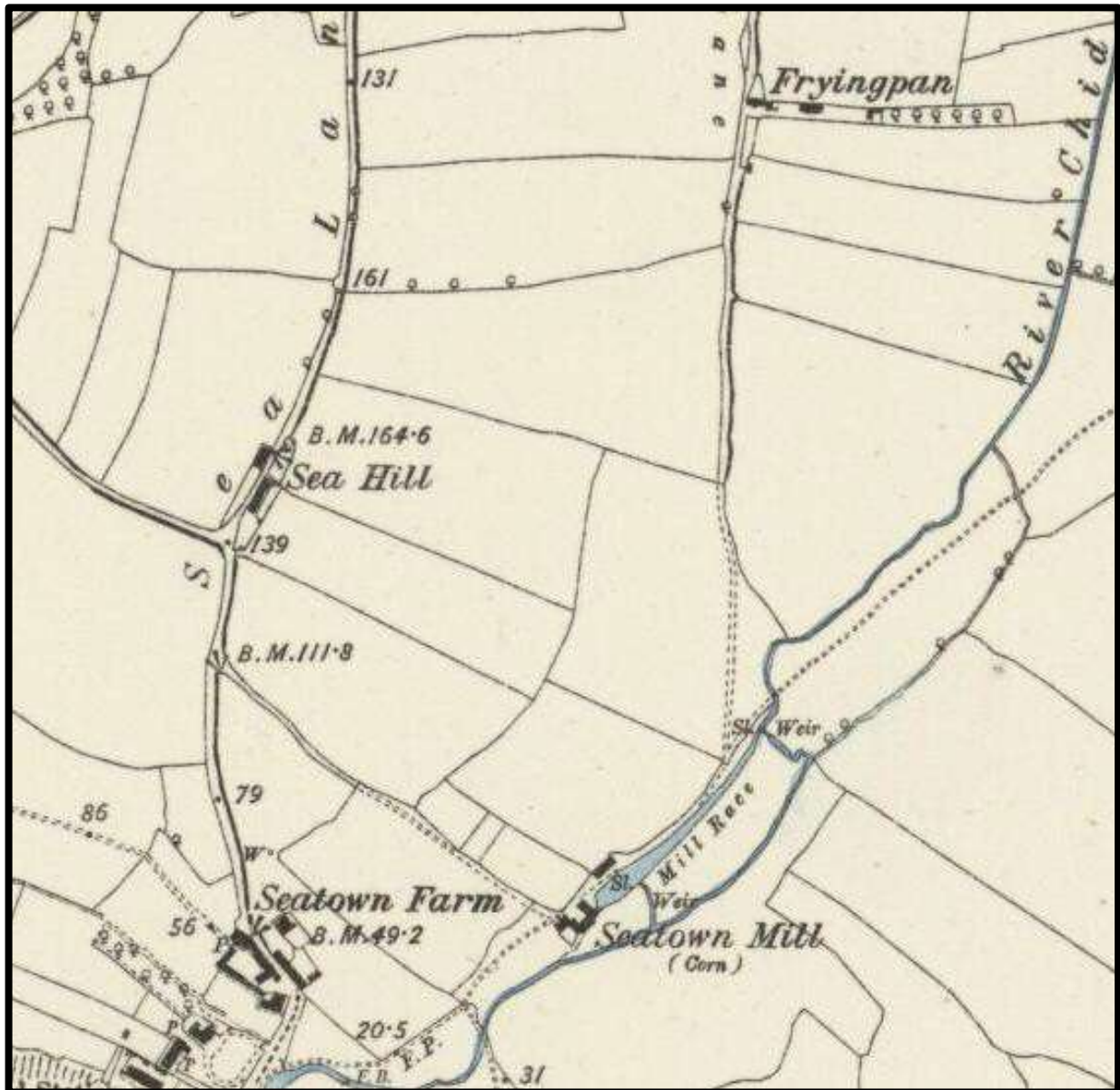


Dorset XXXVII.SE (includes: Chideock; Stanton St Gabri
Surveyed: 1887
Published: 1888

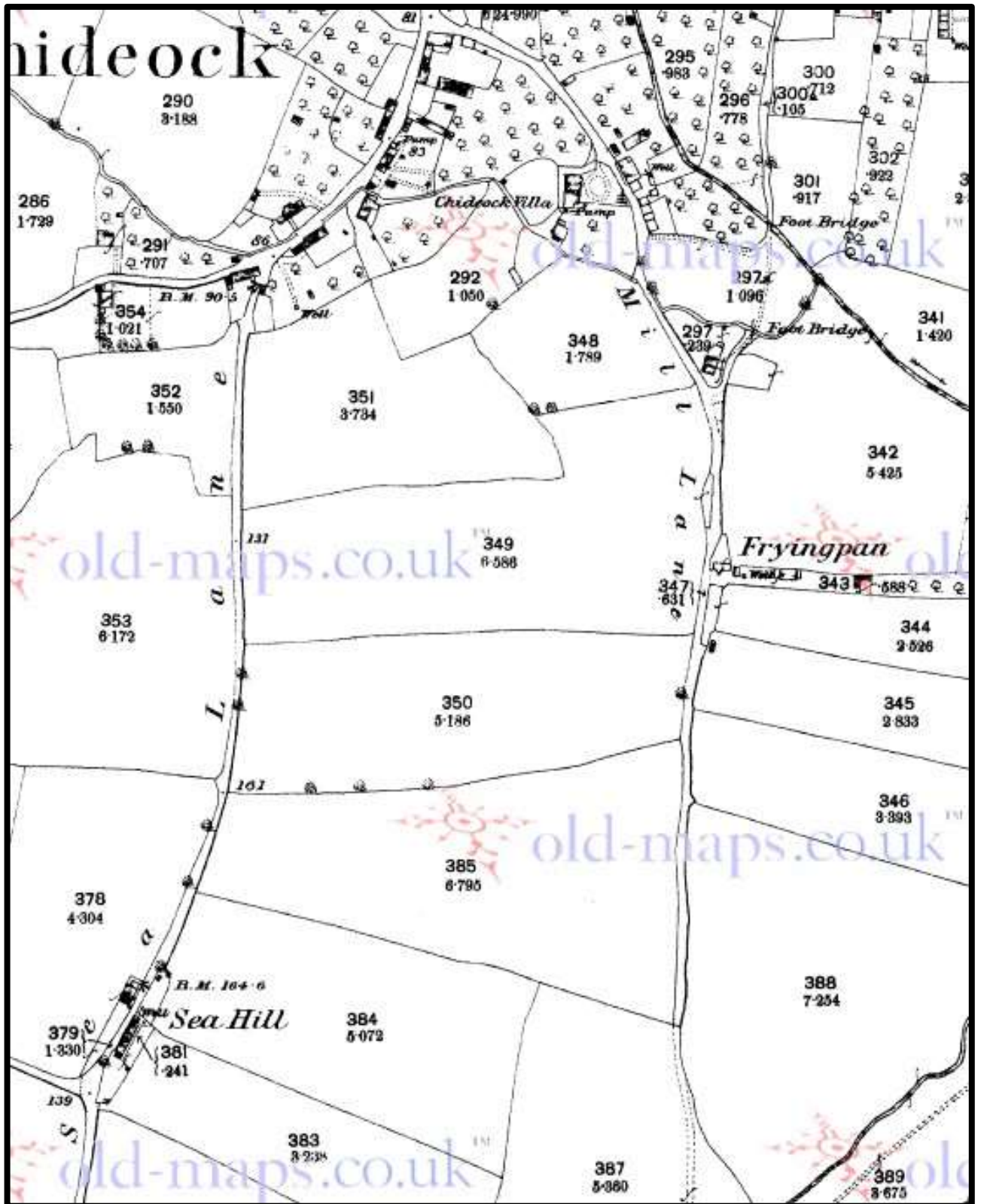
[Maps home](#) > OS Six-inch England and Wales, 1842-1952



Ordnance Survey 6 inch 1887 (Enlarged)



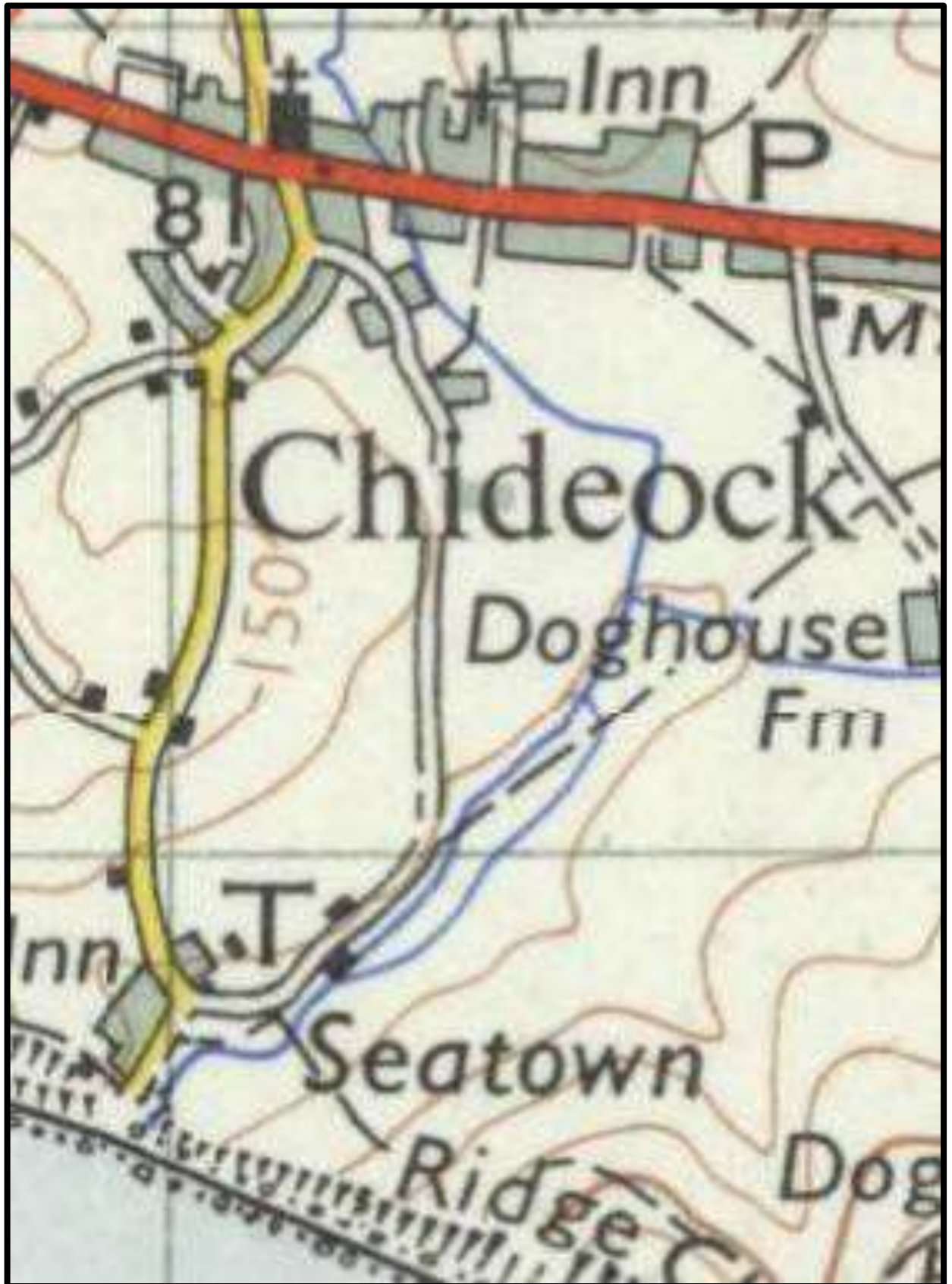
Ordnance Survey 25 Inch 1888



Ordnance Survey Revised One Inch 1898



Ordnance Survey Sheet 177 - Taunton and Lyme Regis - 1960



Caravan Site Planning Application 1951

093208 → 9

BRIDPORT R. D. C.
SURVEYOR'S DEPARTMENT,
10, SOUTH STREET,
BRIDPORT, DORSET.

7th March, 1951

To: C. A. Colkett, Esq.,
The Mill House,
Seaton,
Chideock.

Dear Sir or Madam,

Plan No: 1951 / 36

In pursuance of Section 64 of the Public Health Act, 1936, I hereby give you notice that the plans which were deposited by you on the 20th February, 19 51 for proposed renewal of Camping Licence in respect of 12 caravans at O.S. 588, Mill Lane, Seaton belonging to yourself have been approved by the Council, as a camping site for twelve caravans ~~structures~~ subject to caravans being on site 1st April to 30th September only

(and) for a Temporary Period terminating on the 31st December 1951 for which Camping ~~Temporary Building~~ Licence No. 9/1951 ~~attached~~ will be forwarded under separate cover.

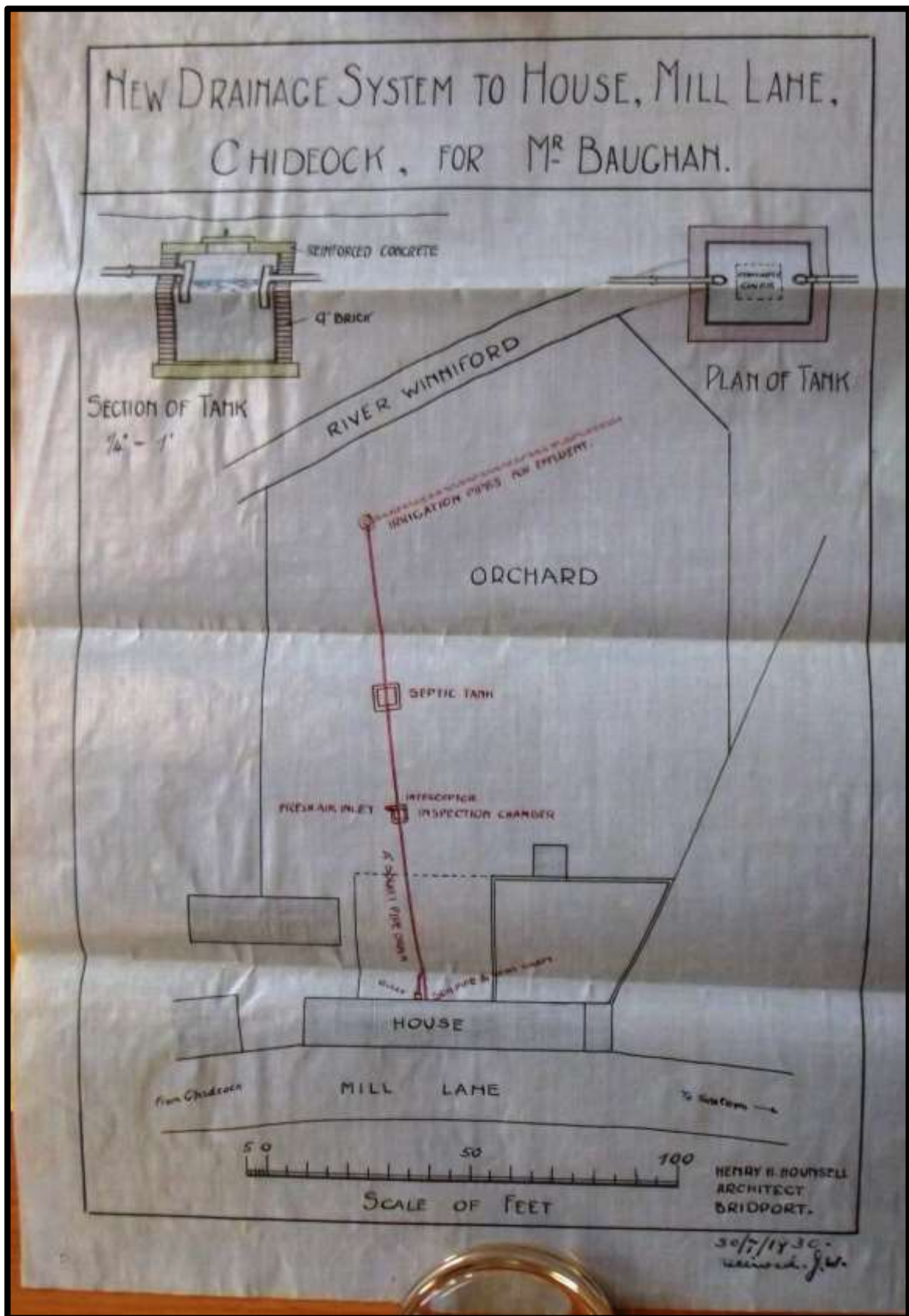
This passing of the plan operates as an approval thereof only for the purposes of the requirements of the building byelaws and those sections of the Public Health Act, 1936, which expressly require or authorise the Council in certain cases to reject plans.

As the work represents development as defined by the Town and Country Planning Act, 1947, **NO** operations may be carried out until permission for development has been obtained, and the amount of Development Charge, if any, has been determined by the Central Land Board and paid by you or otherwise secured.

The notices required to be given under the Building Byelaws hereto attached must be sent to me at the above address as the work proceeds. No inspections will be carried out unless written notification is given and until approval under the Town and Country Planning Act, 1947 has been given.

Yours faithfully,

Planning Application, Mill Lane, Chideock 1930



List of Streets Plan 1974



Current List of Streets Plan

