

Report to the Executive Director for Economy and Environment

Definitive Map Modification Order Application to add footpaths across Ferndown Common, Ferndown

For Decision

Cabinet Member:	Cllr S Bartlett, Planning
Local Councillor(s):	Cllr Cathy Lugg Cllr Mike Parkes
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Statutory Authority:	Highways Act 1980, Wildlife and Countryside Act 1981

Report Status: Public

Executive Summary:

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

Recommendation:

That:

- (a) The application be accepted, in part, and an order made to modify the definitive map and statement of rights of way by adding footpaths across Ferndown Common to join Bridleway 18, Ferndown as shown A-B-B1-B2-C-D and F-F1-B on Drawing T522/26/1; and

- (b) If the Order is unopposed, or if all objections are withdrawn, it be confirmed by the Council.

Reason for Recommendation:

- (a) The available evidence shows, on balance, that the claimed rights of way subsist or are reasonably alleged to subsist in part; and
- (b) The evidence shows, on balance, that footpaths should be recorded as described. Accordingly, in the absence of objections the Council can itself confirm the Order without submission to the Planning Inspectorate.

1 Background

Applicant

- 1.1. An application to record footpaths as shown A-B-C-D-E and F-B on Drawing T522/25/1(Appendix 1) was made by Peter Lowe on 26 March 2012.

Description of the route

- 1.2. The route claimed commences at point A (see Drawing T522/26/1 Appendix 1) on a gravel and soil surfaced track south east from the tarmac road between properties 41 and 43 Forest View Drive, Ferndown, through a pedestrian gate (which was installed after the Definitive Map Modification Order application date), continuing south east along a gravel and stone surfaced track to point B and continues east along a gravel and soil surfaced track to join a wide gravel and stone surfaced track, continuing east to point C where the route joins a brick surfaced track then turns east north east along a narrow sand and soil surfaced path to meet Point D, Bridleway 18, Ferndown and continuing north east to Point E. The width varies from 1.2 metres at a pedestrian gate at point A immediately widening to 3.3 metres continuing at this width to Points B and C where the route meets a brick surfaced track measuring 2.7 metres wide then narrowing to 2 metres, continuing at this width to meet Point D, Bridleway 18, Ferndown and narrowing to 0.80 metres at Point E.
- 1.3. A second claimed route leaves the pavement at Point F across an open grass area, adjacent to property number 55a, entering Ferndown Common via a pedestrian gate (which was installed after the Definitive Map Modification Order application date) at Point F1 and continuing in an east, north easterly direction to meet Point B (See Drawing T522/26/1 Appendix 1). The width varies from open ground at Point F, narrowing to 1.2m at Point F1, at a pedestrian gate then immediately widening to 2 metres and continuing at this width to meet Point B.

Background to the application

- 1.4. Ferndown Common comprises an approximately 68 hectare site managed by ARC (Amphibian and Reptile Conservation) and is considered to be urban heathland. There is an additional parcel of land under the stewardship of the Erica Trust which abuts the 68 hectare site on the western side, marked by a boundary bank, across both of which the claimed routes run.
- 1.5. Ferndown Common encompasses several different designations across much of its area including; a Site of Special Scientific Interest, Open Access Land, Heathland and is, in part, a registered Town and Village Green. The claimed route crosses part of all of these designations.
- 1.6. The application was submitted in 2012 in anticipation of the sale of one of the parcels of land that makes up Ferndown Common.
- 1.7. A second parcel of land over which the claimed routes run, and which further makes up Ferndown Common, was sold in 2014.
- 1.8. Both parcels of land, which make up the majority of the area known as Ferndown Common, are now under the ownership of the Lesley Haskins Charitable Trust.
- 1.9. A large network of paths and tracks cross the area, the use of which is influenced by seasonal weather patterns when ground becomes waterlogged or routes are impacted by fallen trees or branches.
- 1.10. An area of Ferndown Common was registered as a Town and Village Green in 2003 and across which the claimed routes run.
- 1.11. An area of Ferndown Common was designated Open Access land under the Countryside and Rights of Way Act 2000, across part of which the claimed routes run.
- 1.12. An area of Ferndown Common is designated Heathland and a Site of Special Scientific Interest, across part of which the claimed routes run.
- 1.13. The application is to add footpaths in the parish of Ferndown. Ferndown parish was known as Hampreston parish prior to Local Government Reorganisation in 1974.
- 1.14. The application was accompanied by 24 user evidence forms and aerial photography.

Use of evidence

- 1.15. The applicant submitted 24 user evidence in support of this application.
- 1.16. A full consultation exercise was carried out initially from 26 November 2025 to 07 January 2026, which was extended to 31 January 2026 to capture further user evidence. The consultation included affected landowners, user groups, local councils and those affected. The Councillors for the Ward; Cllr Cathy Lugg and Cllr Mike Parkes were also consulted. In addition, notices explaining the application were erected on site. Relevant evidence provided is discussed in this report.

2 Law

Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period (the Relevant Period) is counted back from when the right of the public to use the way is brought into question.
 - ‘As of right’ in this context means without force, without secrecy and without obtaining permission.
 - A right to use a way is brought into question when the public’s right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
 - An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question.
- 2.2 Section 31(3) of the Highways Act 1980 says that where a landowner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.
- 2.3 Section 31 (6) of the Highways Act 1980 permits landowners to deposit with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the

deposit.

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

2.5 Further details on the law are contained in Appendix 2

3 Issue to be decided

3.1 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that public rights subsist, or are reasonably alleged to subsist, on the routes claimed and if so, at what status the routes should be recorded. It is not necessary for evidence to be 'beyond reasonable doubt' before a change to the Definitive Map can be made.

3.2 Any changes to the Definitive Map must reflect public rights that already exist. Decisions must not be taken for reasons of desirability or suitability. Before an order changing the Definitive Map is made, the Council must be satisfied that public rights have come into being at some time in the past. This might be demonstrated by documentary evidence and/or witness evidence.

3.3 Historical documentary evidence and user evidence has been examined to see whether depictions of the routes point to it having acquired public rights as a result of deemed dedication in the past. Any such rights are not lost through disuse.

3.4 Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are no longer used or needed. It is unlikely that a single map or document will provide sufficient evidence to justify a change to the Definitive Map, the evidence must be assessed holistically. The Council has a duty to record any rights that are found to exist even if they are not those claimed by the applicant.

4 Documentary evidence (Appendix 3) (copies available in the case file RW/T522)

4.1 This claim is based mainly on user evidence. Aerial photography was submitted with the application.

4.2 The area has become heavily covered by tree and shrub growth over the passing decades.

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

Finance Act 1910

- 4.4 The Ordnance Survey base map used for the Finance Act 1910 plan shows a network of pecked double line path features across the area known as Ferndown Common. The claimed route does not appear as any of these path features and is otherwise not shown on the plan.
- 4.5 The Finance Act Plan offers no weight of evidence towards the claimed routes.

Ordnance Survey Maps

- 4.6 The Ordnance Survey Map 6 inch to the mile (Circa 1890s) shows a network of pecked double line path features across the area known as Ferndown Common. The claimed routes do not appear as any of these featured paths.
- 4.7 The Ordnance Survey Map offers no weight of evidence towards the claimed routes.

Dorset Council Records

- 4.8 The Parish Survey (1951) for this area did not claim a right of way corresponding to the claimed routes, nor was the claimed routes shown on the Draft Map (1954), Provisional Map (1964), First Definitive Map (1966-67) Revised Draft Map (1974), or the most recently sealed Definitive Map (1989). See Appendix 3 for extract of current Definitive Map (1989).
- 4.9 These records add no weight of evidence towards the claimed routes.

Section 31(6) Deposit

- 4.11 At the time of writing this report, s.31(6) (Highways Act 1980) Statement and Declaration has not been deposited with Dorset Council for the land over which the claimed routes run.

Land Registry

- 4.12 The majority of the land known as Ferndown Common is made up of two parcels and is recorded at Land Registry as Title numbers DT387162 And DT407270
- 4.13 DT387162 was registered to the current owner, The Lesley Haskins Charitable Trust on 24 December 2012 having previously been owned by a family Trust unconnected to The Lesley Haskins Charitable Trust.

- 4.14 DT407270 was registered to the current owner, The Lesley Haskins Charitable Trust on 25 April 2014 having previously been owned by Canford Estates.
- 4.15 DT407270 is also subject to a long term management lease under Title DT375313 to Amphibian and Reptile Conservation Trust (ARC).
- 4.16 Title Registers for DT387162 and DT407270 both ascribe residents access for the 'rights of turbary' for Ferndown Common, giving residents the rights to remove turf (peat) from the Common. The registers do not record general rights of access.
- 4.17 Land Registry records add no weight of evidence towards the claimed routes.

Aerial photographs

- 4.18 All available aerial photography held by Dorset Council for this site was examined. The claimed routes can be seen in aerial photographs since 1972, providing supporting evidence of the existence of parts of the claimed routes on the ground.
- 4.19 Officer Comment: The aerial photographs from 1972, 1997, 2014/15 consistently show large sections of the claimed routes as a track in the location as claimed.
- 4.20 Officer Comment: Aerial photography shows the area of Ferndown Common becoming increasingly tree covered. The aerial photography shows an increasingly dense tree canopy obscuring the western end of the track feature along which points F - B of the claimed routes run.
- 4.21 Officer Comment: The aerial photography of 1972 shows the Forest View Drive development at the western end, where the claimed routes start. There is little tree cover and, at this time, the aerial photograph shows a desire line heading south east at Point A, from properties 41 and 43, Forest View Drive along the same line as the claimed route [See paragraph 5.28].

Summary of documentary evidence

- 4.22 Some of the documentary evidence supports the existence of the claimed routes from the start of the claimed routes in the west across Ferndown Common.
- 4.23 The aerial photographs support the existence of the claimed routes as a continual line from the start of the claimed routes in the west across

Ferndown Common. Aerial photography adds weight to the existence of the claimed routes, but this evidence is not conclusive as to public rights or status of those rights.

5 User evidence (Appendix 4) (Copies available in the case file RW/T522)

- 5.1 Appendix 4 contains charts showing periods and level of use. Evidence submitted as part of the original application T522 in 2012 has been included in this analysis as well as user evidence submitted during the investigation.
- 5.2 24 user evidence forms were submitted with the application for the claimed route in March 2012.
- 5.3 Officer Comment: Several witnesses in the initial 24 user evidence forms claimed seeing people riding horses across Ferndown Common however, few users claimed to have ridden horses themselves. This suggested more evidence of use existed.
- 5.4 Officer Comment: The British Horse Society were contacted to enquire about potential additional user evidence being available and their members were alerted to the DMMO consultation. As a result, an additional 4 user evidence forms were submitted during the investigation, bringing the total user evidence forms available for analysis to 28.
- 5.5 Of the 28 user evidence forms, all attached a plan recording use of some or all of the parts of the claimed routes.
- 5.6 Officer Comment: Of the 24 people who completed user evidence forms submitted with the application form, 20 lived on the Forest View Drive Estate. Forest View Drive is a residential development that started to be built in 1966 with the first houses resided in from 1967. Four other people who completed a user evidence form lived away from the area affected by the claimed routes, much further east of the area known as Ferndown Common.
- 5.7 Officer Comment: All 24 witnesses who completed user evidence forms were contacted and six were subsequently interviewed.
- 5.8 During interview, the six people clarified their use of the application routes used as follows:
- 5.9 One person consistently used routes A-B-C-D-E and F-B on a daily basis to walk their dog.

- 5.10 A further three people made use of the claimed routes from both Points A and F and followed the claimed route to either Point C or Point D but did not leave Ferndown Common at Point E. Of these people, one person who walked their dogs on a daily basis across Ferndown Common stated *"it wouldn't have been right to go onto school grounds with my dogs"* and one other person stating their use of the routes from Forest View Drive, across Ferndown Common, was recreational or to access town facilities and therefore their exit point was via a gap in the fence, which, more recently, had a pedestrian gate installed, straight onto King George V Playing Fields, further south of Point E. During interview this person stated *"I made use of this gate 99% of the time"*. Two of these people also frequently cycled across Ferndown Common and at these times, accessed Ferndown Common from Point A, staying on the claimed route to Points C or D then remained on the Common, using the network of informal routes and existing recorded public rights of way.
- 5.11 One additional person, when interviewed, stated they had not made use of the routes from Points A or F but joined the paths at other parts of the claimed route. This user resides further east of the start of the claimed routes. This person did not use Point E to join or leave Ferndown Common but did use alternative access points from King George V Playing Fields before walking to points D and C.
- 5.12 Officer Comment: Due to a lack of evidence from this user to support any significant section of the claimed route from Points A/F to Point E, the evidence of this user has been excluded from analysis.
- 5.13 Officer Comment: One of the notable details for the user for whom the evidence was excluded was the location of their residential address. They describe accessing Ferndown Common significantly further east of Points A, F and B, due to their place of residence. It was necessary for them to drive to park to make use of Ferndown Common and either make use of the public car park at Ferndown Leisure Centre or a walkers car park that gives access to Bridleway 18, onto Ferndown Common.

- 5.14 Officer Comment: Of the 24 people who submitted a user evidence form with the application, three of the people who were written to but did not respond to the request for further clarification on the information submitted, therefore the information recorded on their user evidence forms cannot be clarified. All three users live a significant distance from Points A and F of the claimed route. All three people claimed use of the route on foot only and for recreational purposes. It is highly probable that these individuals will have made use of routes across Ferndown Common which incorporate aspects of, but not necessarily all of, the length of the claimed routes. Without clarification of their use, the evidence of these three people has also been excluded from analysis.
- 5.15 Officer Comment: Excluding the user evidence of these four people leaves 20 user evidence forms of the original 24, for analysis.
- 5.16 Officer Comment: The residential addresses of these remaining 20 users were all in the area of Forest View Drive or the culs-de-sac from this road.
- 5.17 One further user's evidence was dismissed from analysis as the witness recorded enjoying a private right to use the claimed routes.
- 5.18 Officer Comment: As a result of dismissing this user's evidence, 19 of the original 24 user evidence forms were admissible for analysis.
- 5.19 Four additional user evidence forms were submitted during the consultation period. Combined with the remaining 19 user evidence forms, this gives a total of 23 user evidence forms available for analysis.
- 5.20 Officer Comment: Analysis of the remaining 23 user evidence forms, and the respective maps attached to each form, highlight a slight deviation from the application route between Points B and C by some users. 12 of the 23 witnesses, claim to have arrived at a brick surfaced track via a wide stone and gravel track, turning immediately south at the T-junction with the brick surfaced track, as opposed to the smoother, southerly curve as claimed on the application map. Two additional points have been added to Plan T552/26/1. Point B1 gives the location for the boundary bank feature. And, as a result of the change in track surface and direction of use by users, Point B2, has been added to Plan T552/26/1 (see Appendix 1), to record the sharp southerly turn at the T-junction of the stone and gravel track and the brick surfaced track.

- 5.21 Officer Comment: On examination of the witness maps, the majority claim to have used the application route to point C. It has been upon interview and in conjunction with the information supplied in the users evidence forms that point B1 was added to clarify the location of the boundary bank and the two parcels that make up Ferndown Common. Point B2 was added to clarify that it is at this point the majority of users turned south to meet point C. This is supported by aerial photographs of the claimed route.
- 5.22 Two of the users who completed a user evidence form during the consultation, stated use of the claimed routes on foot and horse and bike, one person claimed use of the route on horse or foot only and the fourth person claimed use of the route on horseback only. All four stated use of the claimed route from Points A/F up to Points C and D with two of those four claiming use of the routes A/F – B – B1 – B2 – C – D - E
- 5.23 All four users accessed Ferndown Common as part of larger recreational circuits on their horses taking in a large area of Ferndown Common, Forest View Drive points were incorporated into circular routes on the existing informal routes and Public Rights of Way that cross Ferndown Common.
- 5.24 All 19 people from the original evidence submitted with the application claim use of the route on foot with one claiming use on pedal bicycle as well. During interview, three of the witnesses claimed occasional use of the routes on pedal bicycle.
- 5.25 Out of the 23 user evidence forms included in the analysis, one user claims use of the routes on horse only. All remaining 22 people claim frequent use of the routes on foot, with seven of these people also claiming less frequent use of the routes on pedal bicycle with four of these seven people also claiming use of the routes on horseback.
- 5.26 Officer Comment: All 23 users claim to have seen others making use of the claimed routes and of these people, nine claimed witnessing others making use of the claimed routes on pedal bicycle and/or horse.
- 5.27 Officer Comment: The number of users claiming use of the routes on horseback and/or pedal bicycle and the frequency of their use is not sufficient to support a status for bridleway or restricted byway for the claimed route.

- 5.28 Two of the 23 users state there being a gate at Point A and one of these people was available for interview. This person clarified that the gate they recall had a gap to one side that they could ride their horse through. Several people describe seeing horse riders across Ferndown Common and one user of the claimed routes stated during interview *"They [horse riders] would come in through Forest View Drive as there was a riding school nearby. When the gates went up sometime after 2012, the horses couldn't get in so fewer people were on the common on horseback."*
- 5.29 Further detail regarding access to Ferndown Common was provided during interview as follows: *"There was no gate initially at Point A when we moved here in the late 60's. There were no trees either and it was possible to see right across the Common, to the playing fields [See paragraph 4.21]. A long gate appeared at Point A some years later but it is hard to remember exactly when. But for a lot of years after we moved here, there was just a gap as we would have remembered needing to open and close a gate to bring our bikes through; and we never needed to. When a gate went in, it was never locked. Most of the time (prior to the current gate) horses came through freely"*
- 5.30 The remaining 21 user evidence forms record there being no gates or stiles on the claimed routes.
- 5.31 None of the 23 users state there being any wiring or fencing across the claimed routes that limited or prevented their access to or use of the claimed routes. During interview, two stated *"at some point, for a short time, there was a sort of barbed wire gate, attached to a post but this wasn't fixed in the ground. It simply moved to one side, similar to a gate. It wasn't there to stop people. There was no barbed wire across any of the paths that we used when we crossed the Common"*.
- 5.32 One of the four people, who completed a user evidence form during the consultation, was interviewed for clarity on the information offered on their user evidence forms. They recall a gate at Point A but with a gap wide enough to one side that they could ride their horse through. They recall that access at Point F was an open gap surrounded by scrub. They do not recall anything to block access at either Point A or F.
- 5.33 None of the 23 users state being given permission to use the claimed routes by anyone. One user described having permission to gain access to the rear of their property on Forest View Drive, that backs onto the Common, to trim their garden hedge as part of fire risk management, following wildfires on Ferndown Common.

- 5.34 Several users recall that scrambler bikes made use of the area closely abutting the claimed route and in close proximity to the residential area of Forest View Drive. This was only for a short time as permissions for this activity were withdrawn following complaints about noise pollution to Ferndown Town Council.
- 5.35 Use of the claimed routes was brought into question in 2012 when a Definitive Map Modification Order application was made due to concerns that imminent land sale across which the claimed routes run would result in access to Ferndown Common being denied. Therefore, the relevant period runs from 1992 – 2012.
- 5.36 Of the 23 admissible user evidence forms submitted, eight witnesses record the routes used to be the same in their entirety to the claimed routes, this being from Points A/F -B -B1 - B2 - C - D - E. This leaves 15 witnesses claiming use of points of the routes that vary from the points of the claimed routes.
- 5.37 Officer Comment: During interview, two of the eight witnesses whose maps claimed use of the routes Points A/F – B – B1 – B2 – C – D – E clarified that they had not used the entirety of the claimed routes but only from Points A/F – B – B1 – B2 – C – D. This leaves six witness forms that support the entirety of the claimed routes from Points A/F through to Point E.
- 5.38 Of the remaining 15 witnesses whose maps vary from the application route: two claimed use of the route from Points F – B – B1 – B2 – C – D – E, one claimed use of the route from Point A – B – C – D – E, three claim use of the routes on their maps from Points A – B – B1 – B2 – C, three claimed use of the routes from Points A/F – B – B1 – B2 – C and six witnesses claim use of the route from Points A/F – B B1 – B2 – C – D.
- 5.39 Officer Comment: There is limited consistency across the routes claimed by the 23 witnesses and analysing the frequency with which the Points as per the application are used shows that: use of Point A is claimed by 21 witnesses, use of Point F is claimed by 19 witnesses, use of Points B, B1, B2 and C are claimed by 23 witnesses, use of Point D is claimed by 17 witnesses and use of Point E is claimed by 11 witness.
- 5.40 Officer Comment: Not all witnesses used route F – B or section A – B but sufficient user evidence supports the existence of public rights along both route F – B and section A – B.

- 5.41 Use of the claimed routes spans a timeframe from 1957 through to 2012.
- 5.42 Of the 23 individuals, 15 claim use of some or all of the points of the claimed routes for the full 20 year relevant period. A further 8 individuals used the route between 6 – 19 years within this 20 year period.
- 5.43 Officer Comment: There has been continual claimed use of routes across Ferndown Common since 1957. See Appendix 4 Chart to Show Years of Continual Use stating the evidence of the 23 users included in the analysis and excluding evidence of user numbers 8,12,13 19,24 as per paragraphs 5.12, 5.14 and 5.17.
- 5.44 The earliest recorded use of the claimed route was the year 1957 with this user claiming continual use of the routes up to and including the year 2012. A further five users claim continual use of the route from the years 1968 to 2012 with the levels of use steadily increasing from the year 1967.
- 5.45 In the relevant 20 year period, 1992 to 2012, the number of users increased from 14 in the years 1992 and 1993 to a maximum of 23 in each year from 2007 to 2012.
- 5.46 Officer Comment: The number of users of the claimed routes, steadily increasing from 1967, correlates to large pockets of residential development occurring in the Ferndown area that surrounds Ferndown Common since the 1960s, Forest View Drive in particular [see paragraph 4.21].
- 5.47 Of the 23 user evidence forms completed, all state their frequency of use varied from daily to several times per week.
- 5.48 Officer Comment: The frequency of use of the claimed route demonstrates a high level of use during the relevant period with the lowest levels of use occurring in the years 1992 and 1993 of approximately 2,905 uses per year (an average of 55.86 uses per week) with maximum levels of use occurring in the years 2007 to 2012 of 5,818 uses per year (an average of 111.86 uses per week).
- 5.49 During interview, several people made mention of wiring that was used to create horse paddocks. All describe this as being further north to the claimed routes and that it did not hinder or prevent access along the claimed routes.

- 5.50 The applicant for the DMMO and who also submitted a user evidence form, described wiring on Ferndown Common that was largely buried underground and which they helped remove at the request of the new owner of Title DT387612.
- 5.51 Officer Comment: on site visits during the investigation, evidence of old fencing furniture exists. This evidence consists of a small number of rotten fence posts lying on the ground and larger upright posts in the ground from which gates potentially hung. There are also a small number of concrete fence posts adjacent to the pylon located close to point B1 adjacent to the boundary bank. All these items of apparent fencing furniture are situated to the north of the claimed routes. There is no evidence of any wire or fencing materials at the site of the claimed routes.
- 5.52 One of the 23 witnesses states seeing a sign stating 'private' on a gate in the 1980's or 1990's. The remaining 22 users state seeing no notices at Points A or F stating 'private' or any other signage on the claimed routes informing them that the claimed routes were not public rights of way.
- 5.53 The chart of use (Appendix 4) illustrates a continuous use 'As of Right' of the claimed route over the full 20 year period.

Summary of user evidence

- 5.54 Some elements of user evidence appears to be in conflict, in particular whether there was a gate at Point A and from what date. However, although some people describe a gate at Point A, no one who recalls a gate describes it as preventing access to Ferndown Common.
- 5.55 There is evidence that fencing was erected in areas of Ferndown Common. None of this fencing is in use now nor is the evidence of old fencing located along or across any of the claimed routes.
- 5.56 On balance, taking into consideration the witness evidence from the application T522, it would suggest that use was 'As of Right' from 1957 and was free and open to the public at large.
- 5.57 On balance, and taking into consideration the witness evidence from those available for interview, evidence supports the existence of public rights along the claimed routes from Points A/F – B – B1 – B2 – C – D (see paragraph 5.38).

- 5.58 There is insufficient evidence to support the claim that public rights exist on the part of the claimed routes from Points D to E (see paragraph 5.38).

6 Landowner correspondence (copies available in the case file RW/T522)

- 6.1 During the consultation, the current landowner for Titles DT387162 and DT407270 responded as well as Dorset Council's Nature Mitigation Team. Further information was sought from ARC (the Amphibian and Reptile Conservation Trust) who hold a long term management lease under Title DT375313.
- 6.2 The current landowner, The Lesley Haskins Charitable Trust, offered the following information:

"The Lesley Haskins Charitable Trust purchased the land embracing points A, & B on 29/11/2012. The previous owners [G&RN] who we understand had owned the land for many years previously. [GN] passed away 2 years ago, but [RN] has recently confirmed information given to me by [GN] at the time of our purchase. This information tallies with my own personal recollection of what was present at the time of our purchase.

Point A was blocked by a metal five bar gate and post and wire fencing beside. There was a sign saying Private.

Point F itself was not in the purchase from [G&RN] and the owner is not known to us. Our boundary is several meters eastwards from point F. We believe that, being from that point in the [G&RN] private ownership, that point was also fenced.

The eastern boundary of what was the [N's] land is the boundary bank which runs parallel with the pylon line. There was also a post and wire fence marking this limit of their ownership (point D on application T224/25/1).

There was also post and barbed wire fence running east to west across their ownership possibly associated with pony grazing.

I clearly recall [GN] telling me that he frequently had to repair these various fences due to people cutting it or otherwise taking it down to gain unauthorised access to and through their land.

The Lesley Haskins Charitable Trust purchased the land to the east of the boundary bank embracing points C, D and E on 11/4/2013. The previous owners were The Canford Estates who had owned the land

(Ferndown Common SSSI) for very many years, and in more recent times had a lease with Amphibian and Reptile Conservation Trust. We do not believe the Estate maintained any fencing (the land in any event has long been CROW land) but their western boundary with the [N's] land was marked by the fence as described above. At the eastern end a meter or so east of point E two fences, we assume erected by a Local Authority, are slightly misaligned leaving a small gap.

It was only after the purchases by LHCT in November 2012 and April 2013 that kissing gates at points A, & just in from point F, were inserted, and the other fencing removed by us for public safety. The Trust manages the land bought from [the Ns] as a Heathland Support Area, and Ferndown Common continues to be leased to ARC."

- 6.3 Officer Comment: A second DMMO investigation is being undertaken that also crosses Ferndown Common. The case reference for this is T224 which is the document referred to in the above statement.
- 6.4 Officer Comment: During a site visit with the current landowner, they were able to relay the information they recall from the point of which they became landowner and information provided to them by the previous landowner as well as conversations held with members of the ARC Team. Direct knowledge of the site by the current landowner appears to post-date the relevant period of 1992 – 2012.
- 6.5 Officer Comment: During this same site visit, evidence of historic fencing materials was identified by the current landowner. However, the evidence of historic fencing does not appear to be in close proximity to the claimed routes [see paragraph 5.48].
- 6.6 A named officer from ARC, provided by the Lesley Haskins Charitable Trust, was contacted and provided the following information:

"ARC do not hold any documents/archives for historical site management [of Ferndown Common]. I started work for ARC [formerly the Herpetological Society] in 1993.

I can't remember ARC putting in any gates until Lesley Haskins Trust bought the land. Gates have been installed along the playing field fence but that wasn't by ARC. A particularly memorable gate is one that has gone in at Mountbatten Drive. We have real problems with the school children sneaking through gaps in the fencing and starting fires on the Common and it is unmanageable to try and keep fixing the fence so I speak with the Town Council when it happens. We manage

recreational use of the site by effectively policing it with the wardens who verbally advise people about appropriate use of the Common.

The entrance from Forest View Drive is absolutely impenetrable as the fire service couldn't get in when there was a fire on the Common. It is scrubland and there were no paths across the other lot of land over the boundary bank. I don't remember there being any structures like fencing or gates at the top of the boundary bank between the two blocks of land to prevent passing from one side to the other.

ARC formally manage the land previously owned by Canford Estate and sold to the Lesley Haskins Charitable Trust. We do not manage the other bit of land bought by the Lesley Haskins Trust but we support [the Trust] in some of the management tasks."

- 6.7 Officer Comment: The verbal information appears to largely be in line with the information provided by the current landowner, the Lesley Haskins Charitable Trust. However, there appears to be contradictory information relating to fencing at the boundary bank that demarks the two title registers and across which the claimed route runs.
- 6.8 Officer Comment: The Mountbatten Drive access to Ferndown Common is not relevant as the location of this road is significantly south and east of the claimed routes.
- 6.9 Dorset Council's Environment Mitigation Delivery Team also provided a response to the consultation as follows:

"The Lesley Haskins Charitable Trust has brought to my attention the above two Definitive Map Modification Order (DMMO) applications. These relate to land at Ferndown Heath, where I have been involved in mitigating recreational pressure since 2009. Between 2010 and 2019, I served as a warden as part of the Dorset Heaths Partnership and East Dorset District Council, engaging with visitors and reporting antisocial behaviour. During this period I visited the Heath many times each week, year-round. Part of the site, including points A and B, was purchased by the Lesley Haskins Charitable Trust in November 2012. I understand that the previous owners [.....] had owned the land for many years before this. During my wardening, I recall the following:

- Access at points A and E were blocked by metal five-bar gates and adjoining post-and-wire fencing.*
- Signage clearly indicated that the land was private.*

• *Despite this, some individuals cut sections of the fence or damaged signs to gain unauthorised access. The owners repeatedly undertook repairs as necessary. The Trust subsequently acquired further land to the east of the boundary bank, encompassing points C, D and E, in April 2013. The previous owner of this area was The Canford Estate, long-term owner of Ferndown Common SSSI, with management leased to the Amphibian and Reptile Conservation Trust (ARC). At the eastern end near point E, two fences are slightly misaligned, creating a small gap through which people—mostly students—sometimes squeezed. Following the transfer of ownership to the Trust, kissing gates were installed at point A and just inside point F, and some fencing was removed for safety reasons. ARC now manages the land. A network of informal—and at times specifically waymarked—paths is maintained across the site. These routes evolve according to habitat conditions, natural events, and management needs. Based on my long-term involvement with the site, it is clear to me that the previous owners made continuing and significant efforts to keep this land private, including maintaining gates, fencing, and signage. This strongly seems to suggest that the long-term, uninterrupted public use required to support these DMMO applications has not been met”.*

- 6.10 Officer Comment: In addition to the information provided by an officer of Dorset Council’s Environment Mitigation Team, a follow up telephone conversation with the officer was held during which they clarified the following:

“the majority of the anti-social behaviour they witnessed and managed on the Common came from school students accessing the Common from Point E”

“as part of the management controls, frequent inspection walks were taken across Ferndown Common”. The officer describes the regular walks as always taking different routes, some would be footpaths and tracks created by walking public, other routes were created by wildlife and then potentially adopted by people walking across the Common. The inspection walks would cross into the land demarked by the boundary bank. The officer does not recall wire fencing at the point of the boundary bank and deferred to the ARC officer, previously spoken with, to give more clarity around fencing at the point of the boundary bank.

- 6.11 Officer Comment: The officer describes walking from one title of land into the other as part of the site management inspection. The officer does not recall whether there was any fencing that prevented them from crossing from one title into the other. They can recall the land to the western end of the claimed routes being overgrown and inaccessible to fire tenders which was a high concern when trying to manage the risks of Heathland fires.

Summary of Landowner correspondence

- 6.12 The three respondents connected to the landownership and management of Ferndown Common provided largely consistent reports about the presentation of the land. Fencing, gates and signs appear to have been in existence at some points of access and on some areas of Ferndown Common.
- 6.13 Officer Comment: The lack of photographic evidence makes corroboration of the location of fencing, gates and signs difficult as it is not clear where these items of fencing, gates or signs were positioned.
- 6.14 Officer Comment: The officer from ARC does not recall wire fencing running along the boundary bank that demarks to the two title parcels and the Mitigation officer does not recall navigating wire fencing when crossing from one title to the other when undertaking their inspections. It is therefore unclear what fencing was in place and during which periods, as described by the current landowner, ARC and the Mitigation Officer, that prevented the users of the claimed routes from gaining access to and crossing from Points A/F across Ferndown Common to Point E.

7 Consultation responses and other correspondence (copies available in the case file RW/T522)

- 7.1 A number of responses were received during the consultation with the following comments:
- 7.2 Ferndown Upper School provided the following response:

“Ferndown Upper School wishes to submit a formal objection only to the section of the proposed route that crosses the King George V (KGV) Playing Fields, which forms an essential part of our school’s outdoor sports provision.

We acknowledge that footpaths across the heathland and Common have been well used over time, as shown on the application plans. We do not object to paths across the Common itself.

Our objection relates solely to the section where the route enters and crosses the KGV field, as shown on Drawing T522/25/1 (points D–E).

1. Safeguarding and Child Protection Risks

This area is used daily by students for Physical Education lessons and supervised outdoor activities. The proposed formalisation of a public right of way across this space presents significant safeguarding concerns...

2. Impact on Curriculum Delivery

The KGV field is our primary outdoor teaching area for PE....

3. Lack of Evidence of Established Use Across the KGV Field

While paths across the Common are visible on historic aerial maps, the section across the KGV field is not shown as a historic or established right of way in the 2012 Application Form or maps submitted by the applicant....

4. Landowner Intent and Historical Management

Since it's formation in 1972 the school has had a lease to use the bottom KGV fields and therefore has consistently treated the field as school-use land, not public access land.

Our supervision, maintenance, use for curriculum delivery and informal challenges to public presence demonstrate no intention to dedicate the land as a public right of way."

- 7.3 Officer Comment: Concerns regarding safety, security and suitability cannot be taken into consideration when determining whether or not public rights exist. However, such matters can be addressed if public rights are ultimately recorded.
- 7.4 Officer Comment: Concerns regarding claims for public rights of way across King George V Playing Fields appear to have arisen due to a misunderstanding of Plan T522/25/1. The claimed routes do not cross King George V Playing Fields.
- 7.5 East Dorset Ramblers offered their support to the claim and stated "We have no evidence with regards to points 1, 2 and 3, however, we welcome any footpaths which can be shown as rights of way being recorded as such on the Definitive Map."

Summary of Consultation Responses

- 7.6 Ferndown Upper School offer support for the claimed routes from Points A/F – B – C – D on Plan T522/25/1 but states concerns regarding the claim from Points D – E as it is believed this section of the claim crosses King George V Playing Fields which is leased to the school. The land over which points D – E of the claimed route runs is part of Ferndown Common, not King George V Playing fields.
- 7.7 The Ramblers offer their support of the claimed routes although provide no evidence of use nor towards the existence of public rights.

8 Analysis of the evidence

- 8.1 There is evidence of public use of the claimed route since 1957 and the user evidence put forward supports the claim that the route has been dedicated as a public right of way. The evidence of use under Section 31 of the Highways Act 1980 and common law is considered below.
- 8.2 Analysis of the evidence under Section 31, Highways Act 1980

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

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

Physical nature of the route

- 8.3 The route claimed is capable of being a public right of way at common law, given that it follows a well-defined track, to join Bridleway 18, Ferndown at Point D.

- 8.4 The access to the claimed route is currently available.

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

- 8.5 It is considered the earliest date of challenge which brought into question the right of the public to use the claimed routes as shown Points A/F to Point E on plan T552/25/1 is the year 2012, the date of the application.
- 8.6 Landowner and land manager evidence states fencing, gates and signs existed across parts of Ferndown Common. Witnesses do not recall fencing that prevented access to or along the claimed routes, nor any signs at the points of access to Ferndown Common from Forest View Drive dissuading people from making use of the routes. One witness recalls a gate at Point A, which did not prevent access to the claimed routes. There is insufficient evidence that the fencing, gate or signs were in locations or of a nature that brought into question the right of the public to use the claimed routes.

Twenty years use without interruption

- 8.6 Based on analysis of the user evidence from the completed witness evidence forms it would appear that there has been no interruption to public use from 1957 until 2012. The routes as claimed remain open and available. The 20 year relevant period is taken to be from 1992 to 2012.

Without force, secrecy or permission

- 8.7 There is no evidence by the witnesses to suggest that the route has ever been used by force.
- 8.8 All the witness evidence (written and verbal) states that the route has always been available for use by the public and there is no recall of signs or fencing that prevented access. A gate at Point A, described by only one witness as being in situ prior to 2012, was also said to have had a gap wide enough that a horse could get through.
- 8.9 There is no evidence to suggest that use of the routes has ever been because of a landowner's permission.

Use by the public

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

- 8.11 Evidence has been submitted by 28 witnesses, 23 of whose evidence was included in analysis, stating that use of the claimed route has continued from 1957 until 2012. These users also used the claimed route during the years of the defined relevant period (1992-2012). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test.

The evidence submitted in support of the application indicates that the route was used freely by the public for many years and without challenge. This continues to be the case.

Conclusions under Section 31, Highways Act 1980

- 8.12 It is considered that the requirements of Section 31 have been satisfied in this case and that the public have been using the route 'as of right' for a full period of twenty years between 1992 and 2012.

Analysis of the evidence under common law

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

Conclusions under common law

- 8.14 There is sufficient evidence from which a deemed dedication at common law can be inferred.

9 Conclusions

- 9.1 In deciding whether or not it is appropriate to make an order, it must be considered whether public rights subsist or are reasonably alleged to subsist on this route and, on balance it is considered that there is sufficient evidence for the “reasonably alleged” test to be met.
- 9.2 The aerial photography shows the existence of the claimed routes from 1972 through to the aerial photos taken in 2014, allowing for tree cover.
- 9.3 The user evidence indicates that the route has been in use since 1957 with levels of use increasing significantly during the relevant period.
- 9.4 The user evidence in the form of witness statements confirms continuous use from 1957 through to 2012.
- 9.5 The user evidence clarified by those available for interview suggest public rights exist from Points A/F - B – B1 – B2 - C – D.
- 9.6 There is insufficient evidence to support the claim that public rights exist from Points D to E.
- 9.7 The available evidence is also sufficient for a dedication at common law to be inferred.
- 9.8 Therefore, the recommendation is that an Order is made to add the claimed route to the Definitive Map and Statement as a Footpath from Points A–B–B1–B2–C–D and Points F–F1–B, as per Drawing T522/26/1 (Appendix 1).
- 9.9 If no objections are received to the Order, the Council may itself confirm the Order.
- 9.10 If objections are received to the Order, the Council must submit the application to the Planning Inspectorate, with the objections, for it to determine the outcome of the application.

10 Alternative options considered

- 10.1 None.

11 Legal Considerations

- 11.1 See paragraph 2 above

12 Financial Implications

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

13 Natural environment, climate & ecology implications

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

14 Well-being and Health Implications

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

15 Other Implications

- 15.1 None

16 Risk Assessment

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

Current Risk: LOW

Residual Risk: LOW

17 Equalities

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

18 Appendices

- 1 Drawing T522/25/1

Drawing T522/26/1

- 2 Law

- 3 Documentary evidence - Extracts from key documents:

- Finance Act Plan (1910)
- Ordnance Survey Map (C 19th Century)
- Extract of Current Definitive Map (1989)

- 1972 Aerial photography
- 1997 Aerial photography
- 2014 Aerial photography

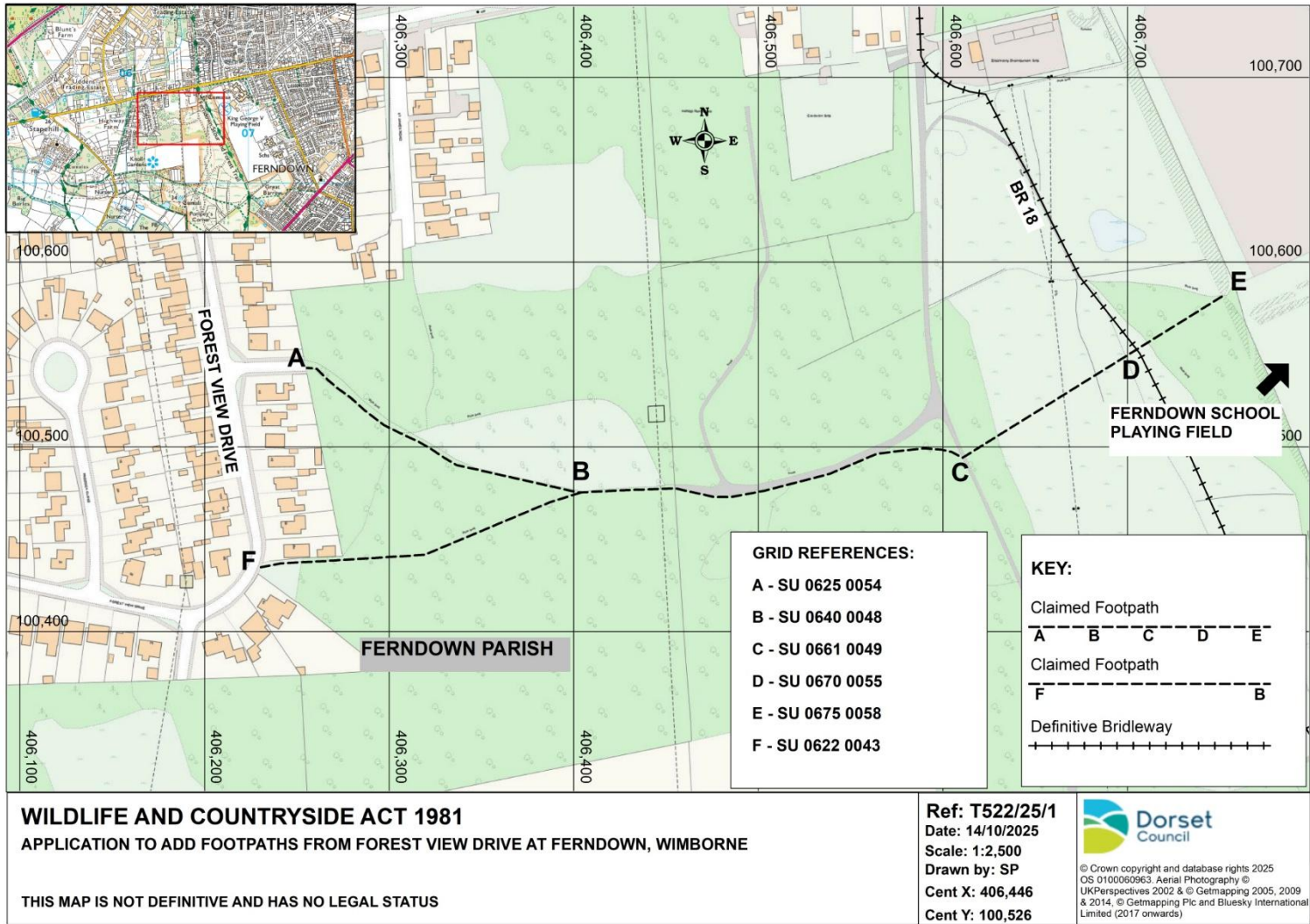
4 Charts to show periods and level of use

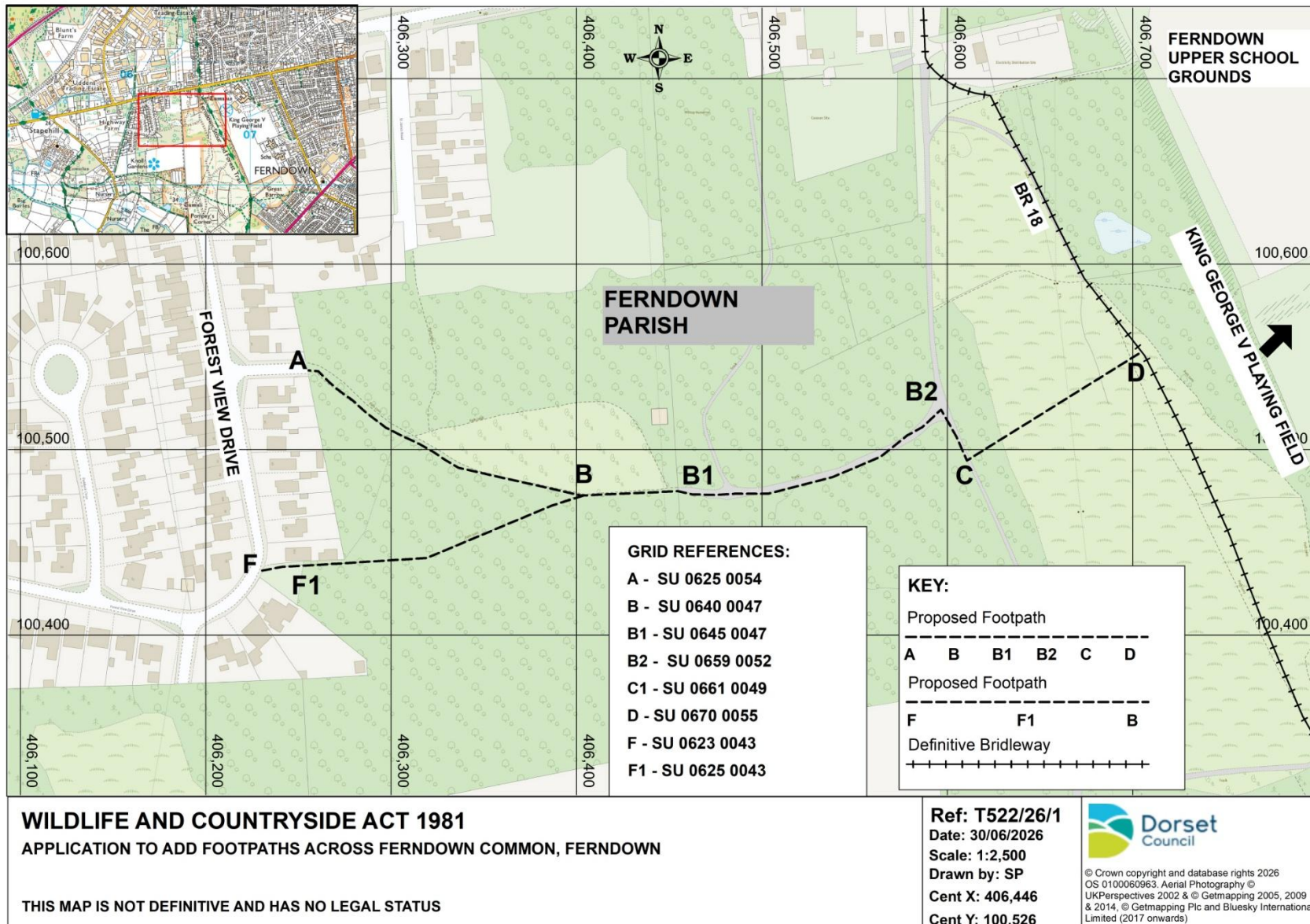
19 Background Papers

The file of the Executive Director, Place (ref. RW/T522).

Date: June 2026

APPENDIX 1





LAW

APPENDIX 2

General

Wildlife and Countryside Act 1981

- 1.1 Section 53 of the Wildlife and Countryside Act 1981 requires that the Council keep the definitive map and statement under continuous review and in certain circumstances to modify them. These circumstances include the discovery of evidence which shows that a right of way not shown in the definitive map and statement subsists or is reasonably alleged to subsist.
- 1.2 Section 53 of the Act also allows any person to apply to the Council for an order to modify the definitive map and statement of public rights of way in consequence of the occurrence of certain events. One such event would be the discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way not shown on the definitive map and statement subsists.
- 1.3 The Council must take into account all relevant evidence. They cannot take into account any irrelevant considerations such as desirability, suitability and safety.
- 1.4 For an application to add a right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows either:
 - (a) that a right of way subsists or
 - (b) that it is reasonably alleged to subsist.

The evidence necessary to satisfy (b) is less than that necessary to satisfy (a).
- 1.5 An order to add a route can be confirmed only if, on the balance of probability, it is shown that the route as described does exist.
- 1.6 For an application to change the status of an existing right of way, the Council must make an order to modify the definitive map and statement if the balance of evidence shows that it ought to be recorded with that different status.
- 1.7 The confirmation test for an order to change the status of an existing right of way is that same as the test to make that order.
- 1.8 An order to add a right of way and change the status of an existing

right of way as part of the same route should only be made if the balance of the evidence shows that the new route exists and the existing route should be recorded with a different status.

- 1.9 Where an objection has been made to an order, the Council is unable itself to confirm the order but may forward it to the Secretary of State for confirmation. Where there is no objection, the Council can itself confirm the order, provided that the criterion for confirmation is met.

2 Highways Act 1980

- 2.1 Section 31 of the Highways Act 1980 says that where a way has been used by the public as of right for a full period of 20 years it is deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period is counted back from when the right of the public to use the way is brought in to question.

- (a) 'As of right' in this context means without force, without secrecy and without obtaining permission.
- (b) A right to use a way is brought into question when the public's right to use it is challenged in such a way that they are apprised of the challenge and have a reasonable opportunity of meeting it. This may be by locking a gate or putting up a notice denying the existence of a public right of way.
- (c) An application under Section 53 (5) of the Wildlife and Countryside Act 1981 for a modification order brings the rights of the public into question. The date of bringing into question will be the date the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

- 2.2 The common law may be relevant if Section 31 of the Highways Act cannot be applied. The common law test is that the public must have used the route 'as of right' for long enough to have alerted the owner, whoever he may be, that they considered it to be a public right of way and the owner did nothing to tell them that it is not. There is no set time period under the common law.

- 2.3 Section 31(3) of the Highways Act 1980 says that where a land owner has erected a notice inconsistent with the dedication of a highway, which is visible to users of the path, and maintained that notice, this is sufficient to show that he intended not to dedicate the route as a public right of way.

- 2.4 Section 31 (6) of the Highways Act 1980 permits landowners to deposit

with the Council a map and statement indicating what ways over the land (if any) he admits to having been dedicated as highways. A statutory declaration can be made at intervals of not more than 20 years stating no additional ways have been dedicated since the date of the deposit. In the absence of proof to the contrary, this is sufficient to establish that no further ways have been dedicated. Prior to the Highways Act 1980 a similar facility was available under the Rights of Way Act 1932 and the Highways Act 1959.

- 2.5 Section 32 of the Highways Act 1980 says that the Council must take into consideration any map, plan or history of the locality. Documents produced by government officials for statutory purposes such as to comply with legislation or for the purpose of taxation, will carry more evidential weight than, for instance, maps produced for tourists.

3 Human Rights Act 1998

- 3.1 The criteria for definitive map modification orders are strictly limited to matters of fact and evidence. In all cases the evidence will show that the event (section 53) has already taken place. The legislation confers no discretion on a surveying authority or the Secretary of State to consider whether or not a path or way would be suitable for the intended use by the public or cause danger or inconvenience to anyone affected by it. In such situations where the primary legislation offers no scope for personal circumstances to affect the decision on the order, the Planning Inspectorate's recommended approach is to turn away any human rights representations.

- 3.2 A decision confirming an order made under the Wildlife and Countryside Act 1981 would be lawful (under domestic law) as provided by Section 6.2 of the Human Rights Act 1998 even in cases where the Convention was apparently infringed, where it was impossible to interpret the 1981 Act in such a way that it is compatible with the Convention rights (section 3 Human Rights Act 1998).

4 Finance Act 1910

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

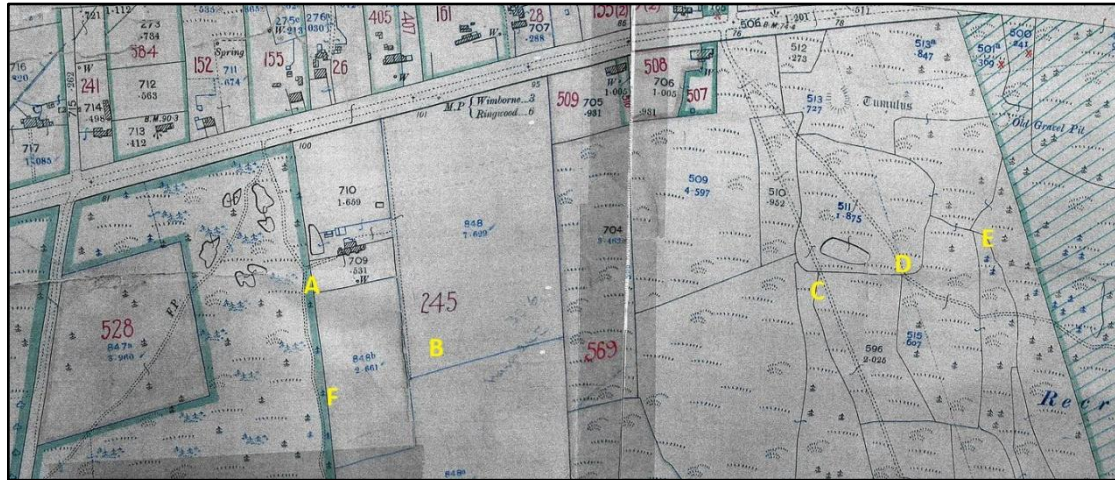
deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

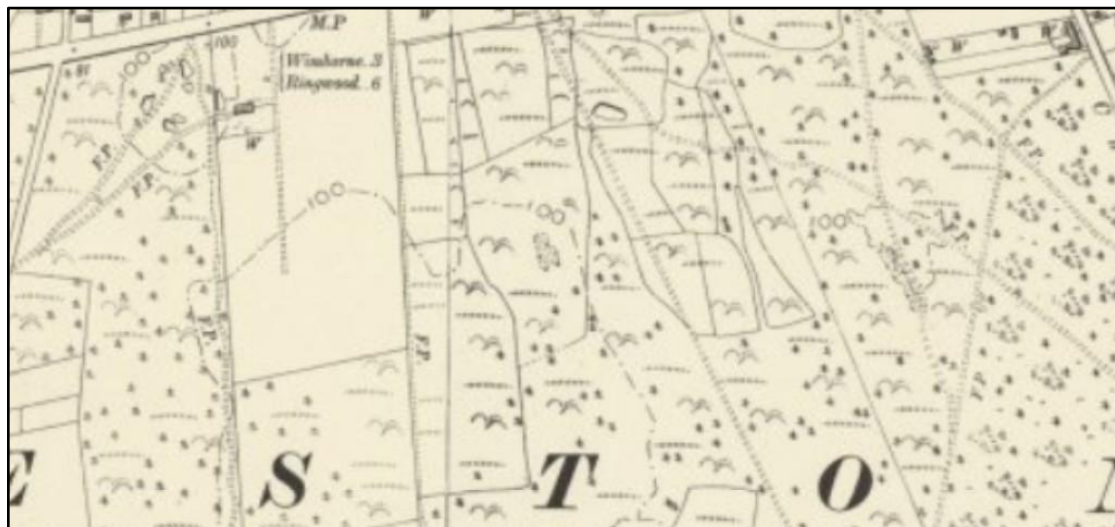
- 5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

Documentary evidence considered

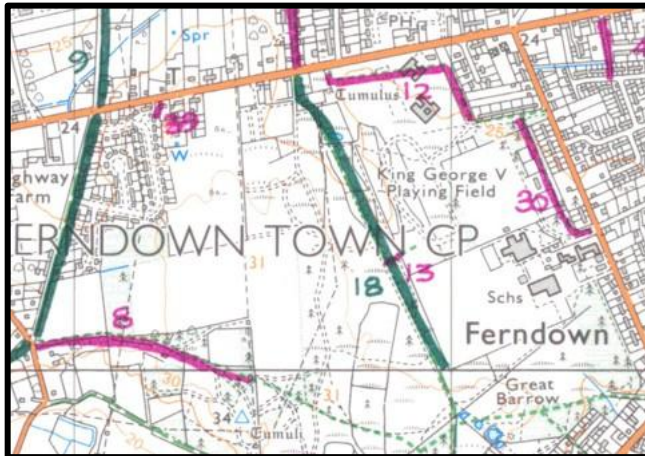
Finance Act Plan (1910)



Ordnance Survey



Current Definitive Map (Sealed 1989)



Aerial Photography (1972)

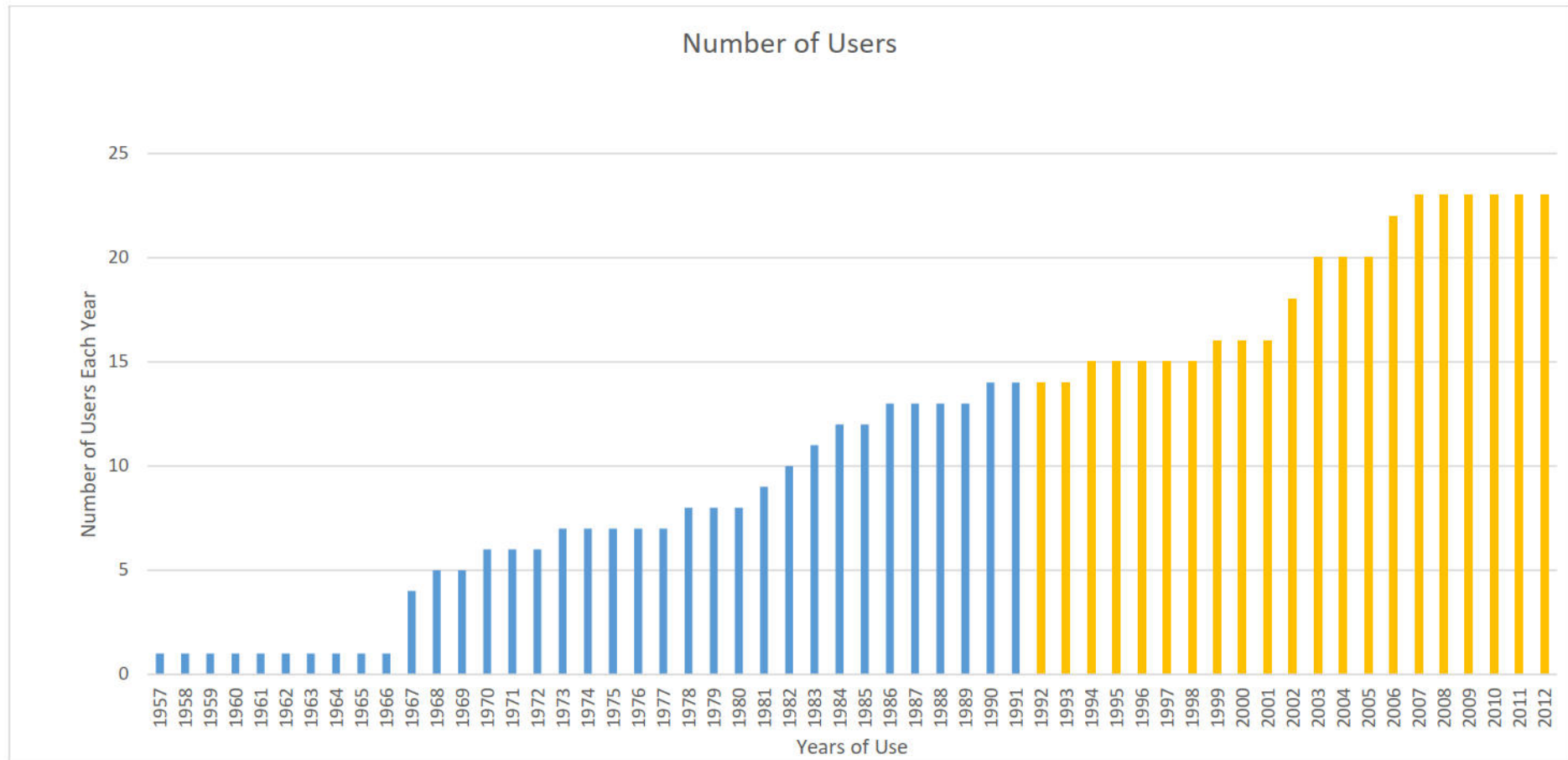


Aerial Photography (1997)



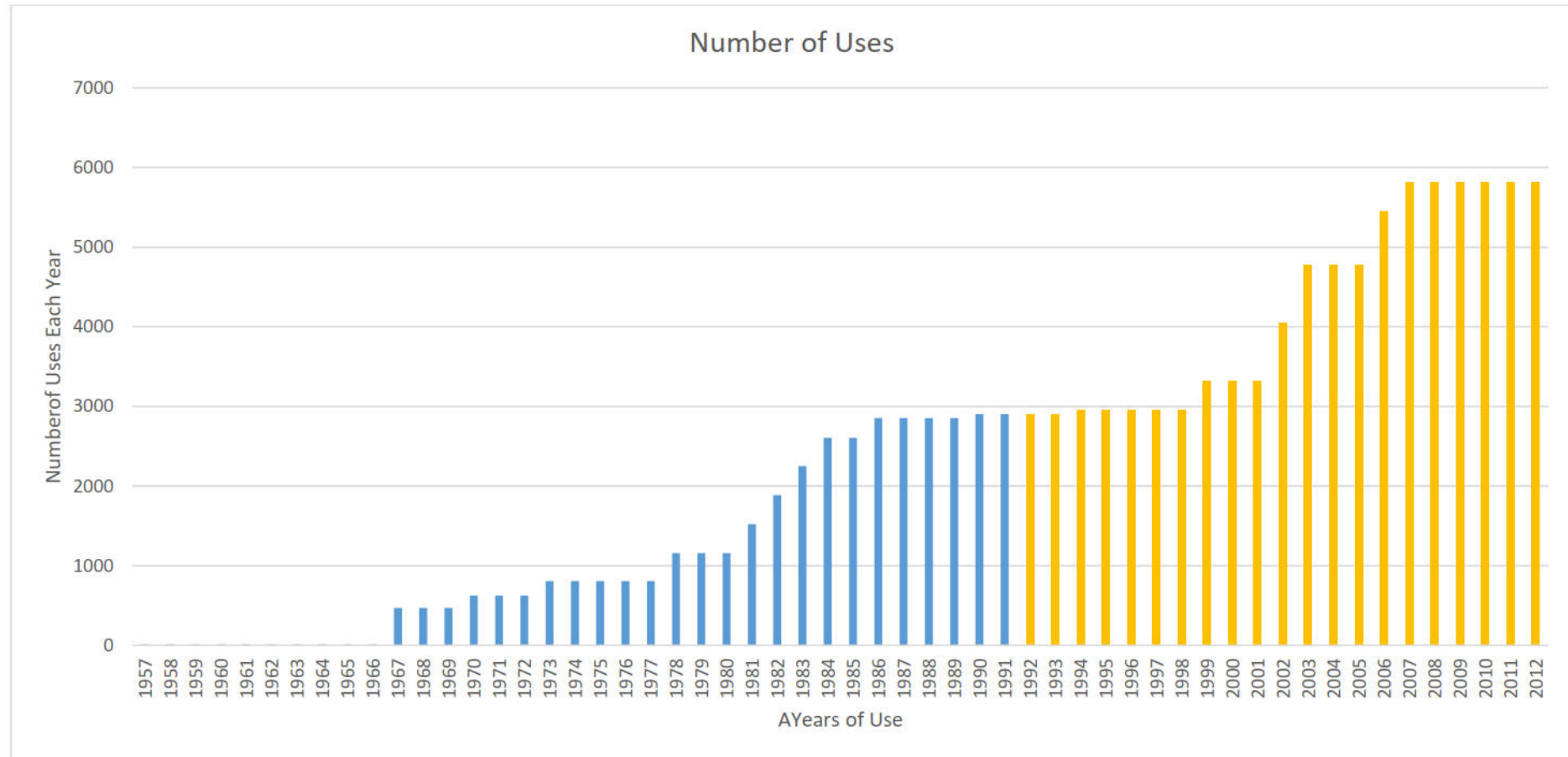
Aerial Photography (2014)



APPENDIX 4**Chart to show level of use****20 YEAR PERIOD**

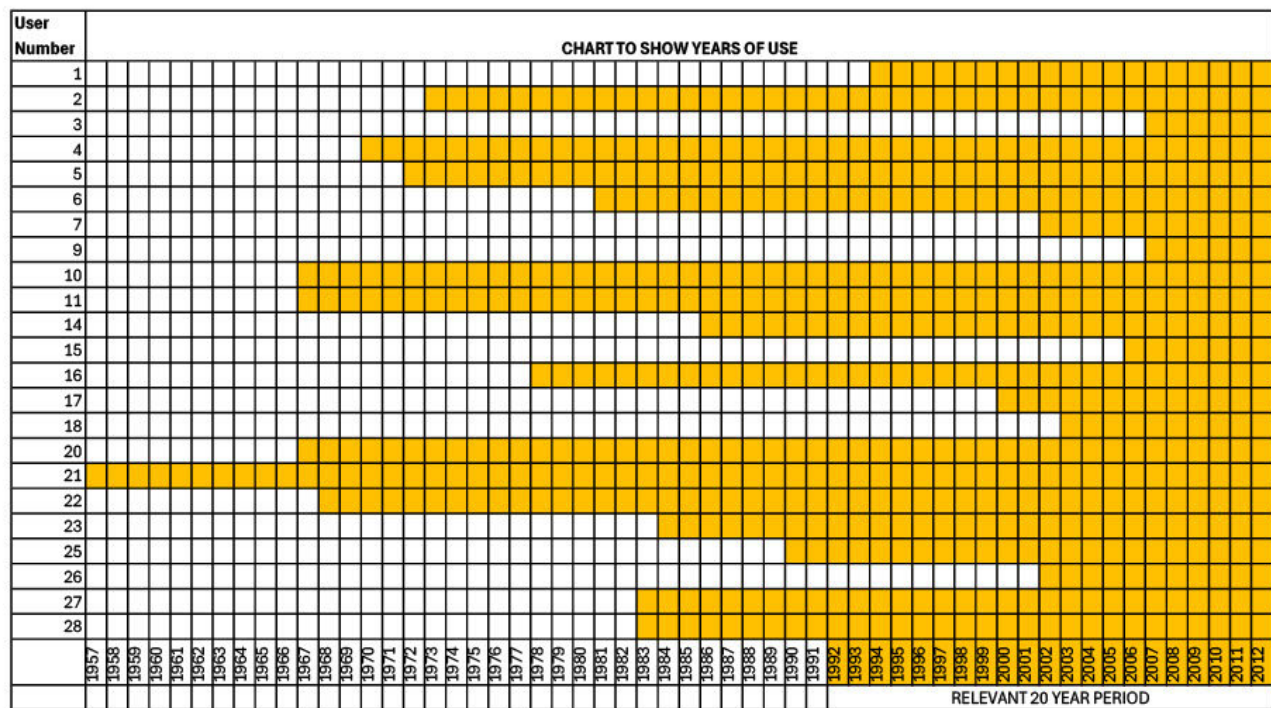
APPENDIX 4

Chart to show frequency of use



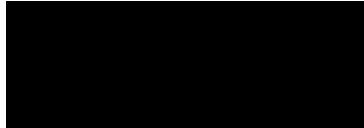
20 YEAR PERIOD

Chart to show years of use



Recommendations accepted:

Signed:

A solid black rectangular box used to redact the signature of Vanessa Penny.

Date:... 13 July 2026.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning

Authorised by the Executive Director for Economy & Environment to sign on his behalf.