

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 across Ferndown Common in Ferndown Parish. Following an investigation of the evidence, a recommendation is made to refuse the application.

Recommendation:

That:

- (a) The application be refused

Reason for Recommendation:

- (a) The available evidence, on balance, does not show that the claimed rights of way subsist or are reasonably alleged to subsist.

1 Background

Applicant

- 1.1. An application to record footpaths as shown A-B-C-D and E-B on Drawing T224/25/1(Appendix 1) was made by Ferndown Town Council in December 1999 and was registered as such on 01 March 2000. The application map shows routes from Points A-B-C-D and E-B. The application description is recorded as “between 41 and 43 Forest View Drive to path from end of St James Road and across common to Bridleway 18”.

Description of the route

- 1.2. Two routes are claimed, the first route claimed commences at point A on a gravel and soil surfaced track south east from the tarmac road between properties 41 and 43 Forest View Drive, Ferndown, through at pedestrian gate (this being installed after the Definitive Map Modification Order application date), continuing south east along a gravel and stone surfaced track to point B then turns east along a grass area into gorse and mature trees, which obstruct the claimed route, making Point C inaccessible, but around this area another route has become available to curve around the eastern side of an electricity pylon then turning south to Point D at a wide gravel and stone surfaced track. The width varies from 1.2 metres at a pedestrian gate at point A immediately widening to 3.3 metres continuing at this width between trees to Point B where mature trees and gorse shrub cover the ground and creates variable widths of no less than one metre to the electricity pylon in the proximity of Point C where the route turns south at a width of no less than one metre, alongside a modest boundary bank to the east of a pylon to Point D.
- 1.3. A second claimed route leaves a pedestrian gate at Point E, the southern end of the privately owned St James Road (the pedestrian gate being installed after the Definitive Map Modification Order application date) and continuing south over an open grass area. The width varies from 1.2m at Point E, at a pedestrian gate then immediately entering an open grass area then entering mature trees where the width narrows to approximately 3 metres and continuing at this width between trees to 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. It is across the western parcel of land that 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.
- 1.6. The application was submitted in 1999 in anticipation of potential development on the parcel of land across which the claimed routes run.
- 1.7. The parcel of land, which partially makes up the area known as Ferndown Common, came under the ownership of the Lesley Haskins Charitable Trust in 2012.
- 1.8. 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. The vast majority of these paths are informal and cross many of the areas of designation.
- 1.9. There are also several public rights of way of footpath and bridleway status across Ferndown Common. None of these are in the vicinity of the area of land across which the claimed routes run.
- 1.10. A separate Definitive Map Modification Order for additional routes in the proximity of the claimed routes was made in 2012, parts of which cross the same parcel of land.
- 1.11. An area of Ferndown Common was registered as a Town and Village Green in 2003 and which encompasses the claimed routes.
- 1.12. An area of Ferndown Common was designated Open Access land under the Countryside and Rights of Way Act 2000, which is abutted to the west by the area across which the claimed routes.
- 1.13. An area of Ferndown Common is designated Heathland and a Site of Special Scientific Interest, which are abutted to the west by the area across which the claimed routes run.

- 1.14. 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.
- 1.15. The application was accompanied by 19 user evidence forms and aerial photography.

Use of evidence

- 1.16. The applicant submitted 19 user evidence in support of this application.
- 1.17. A full consultation exercise was carried out initially from 26 November 2025 to 07 January 2026, 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 on user evidence.

- 4.2 The area across which the claimed routes run is known as Ferndown Common.
- 4.3 The area has become heavily covered by tree and shrub growth over the passing decades.
- 4.4 During the course of the investigation, the following documents were examined in relation to the area of the claimed route.

Finance Act 1910

- 4.5 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 routes do not appear as any of these path features and is otherwise not shown on the plan.
- 4.6 The Finance Act Plan offers no weight of evidence towards the claimed routes.

Ordnance Survey Maps

- 4.7 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 route may appear as part of a double pecked north south feature, but the open nature of the land makes clarification of the location of the double pecked line in relation to the claimed routes uncertain.
- 4.8 The Ordnance Survey Map offers no weight of evidence towards the claimed routes.

Dorset Council Records

- 4.9 The Parish Survey (1951) for this area did not claim a right of way corresponding to the claimed routes, nor were 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).
- 4.10 These records add no weight of evidence towards the claimed routes.

Section 31(6) Deposit

- 4.11 At the time of writing this report, a 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. The claimed routes are entirely within this parcel.
- 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. The claimed routes abut the western side of this parcel.
- 4.15 DT407270 is also subject to a long term management lease under Title DT375313 to Amphibian and Reptile Conservation Trust (ARC).
- 4.16 The Title Register for DT387162 ascribe residents access for the 'rights of turbary' for Ferndown Common, giving residents the rights to remove turf (peat) from the Common. The register does 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.
- 4.19 Officer Comment: Aerial photography from 1972, 1997 and 2002 shows Ferndown Common's increasingly dense tree canopy obscuring the entirety of the claimed routes. The electricity pylon near Point C remains an identifiable landmark throughout.
- 4.20 Officer Comment: The aerial photography of 1972 shows the Forest View Drive development to the west, where Point A of the claimed routes start. There is little tree cover and, at this time, the aerial photograph shows a desire line as per the claimed route from points A – D. The claimed route from Points E – B is apparent but is far less clear than the claimed route from points A - D. Aerial photography of 1997 and 2002 do not clearly depict either of the claimed routes.

Sales Particulars

- 4.21 Sales particulars for the parcel of land across which the claimed routes run were analysed. Photos of the land immediately to the south of St James Road shows several horses on the land within fenced paddocks.
- 4.22 Officer Comment: The land was placed on the market in 2011 and the agent selling the land to the current owners confirm they took the pictures in 2011 as part of the sales instruction.

Summary of documentary evidence

- 4.23 The aerial photograph from 1972 shows the claimed route from Points A – B – C – D but the route from Point E – B is far less clearly defined. The claimed routes are obscured in later aerial photography due to the dense tree canopy across the area across which the claimed routes run. The 1972 aerial photography adds a limited amount of weight to the existence of the claimed routes, but this evidence is not conclusive as to public rights or status of those rights.
- 4.24 The sales particulars show an area off St James Road. The area is crossed by fencing. These pictures were taken 11 years after the application for the claimed routes was made and it is not known if this fencing was in situ in 1999 at the time of the application.
- 4.25 The remaining documentary evidence adds no weight of evidence to the existence of the claimed routes.

5 User evidence (Appendix 4) (Copies available in the case file RW/T224)

- 5.1 Appendix 4 contains charts showing periods and level of use. Evidence submitted as evidence has been included in this analysis. One further user evidence form was submitted during the investigation.
- 5.2 19 user evidence forms were submitted with the application for the claimed route in December 1999.
- 5.3 The 19 user evidence forms submitted did not require users to provide significant detail regarding the claimed route/s nor were users required to provide a map to be included as part of the users' evidence.

- 5.4 16 of the 19 user evidence forms submitted with the application forms did not include a map to record the route used. The remaining three people offered a pen and paper sketch of lines depicting the layout of the Forest View Drive residential area, on which Point A for one of the claimed routes is located.
- 5.5 Officer Comment: Without a plan, it is not possible to identify the particular routes the 16 people who did not submit a map are claiming. Of the three sketches submitted, two were drawn on blank scraps of paper and shows arrows along a double sided solid line and the word 'Pylon'. The third was a sketch within the user evidence form, fitted around the wording for a brief description of the route. This is an illustration of the residential area of Forest View Drive but does not offer details for the route/s being claimed.
- 5.6 One of the user evidence forms was excluded from analysis as the form did not offer any information on the use of or knowledge of the claimed routes.
- 5.7 Officer Comment: The remaining 18 witnesses who completed user evidence forms were contacted and two were subsequently interviewed.
- 5.8 One further user evidence form was completed during the investigation. The accompanying map used to illustrate the routes used was a copy of the plan produced by Dorset Council for use during the public consultation. The user signed and dated the map.
- 5.9 Officer Comment: the user evidence form with a plan produced for the public consultation does not invalidate the evidence but it reduces the significance as the map has not been independently produced.
- 5.10 Including this additional user evidence form gives a total of 19 user evidence forms for analysis.
- 5.11 During interview, the two people clarified their use of the routes as being only from Point A continuing south, beyond Point B to a more established path running parallel to but south of the claimed routes continuing east along a track at Point D further onto Ferndown Common. They did not use the second claimed route, from Point E to B, south from St James Road.

- 5.12 Two people contacted for further information confirmed via email that they made occasional use of Points E to B, south of St James Road. One further user confirmed they never used St James Road route from Points E to B, only making use of the route from Forest View Drive. No other witnesses mention their use of the claimed route E to B.
- 5.13 Of the 19 user evidence forms eligible for analysis, 16 offer a description of a route and of these, twelve users describe Forest View Drive as being the start point of the claimed route (eleven specifying the route starts between Numbers 41 & 43 of Forest View Drive). Two users give Award Road (which lies to the west of the Forest View Drive residential development) as their description for the starting point of the claimed route, incorporating Forest View Drive, two give an Ordnance Survey Grid Reference as their description for the whole route, and one states the route as being the footpath across the common. One person who did not provide a description, instead offered a sketch stating Forest View Drive between property numbers 41 and 43 as being the start point.
- 5.14 Officer Comment: 11 of the 19 users who claim use of the application routes indicate a route starting at Point A, between property numbers 41 and 43, Forest View Drive.
- 5.15 Of the 19 user evidence forms eligible for analysis, the end destination given by each witness is variable. Three witnesses do not provide a description of a destination. Two witnesses give an Ordnance Survey reference for their description of the route, twelve refer to crossing Ferndown Common. Only two users refer to the pylon as their destination for the claimed route.
- 5.16 Officer Comment: The majority of the 19 users who claim use of the application routes do not offer the pylon as part of their use of the claimed routes.
- 5.17 Use of the claimed routes was brought into question in 1999 when a Definitive Map Modification Order application was made due to concerns that development of the area would result in access to Ferndown Common being denied. Therefore, the relevant period runs from 1979 - 1999.

- 5.18 Of the 19 users evidence eligible for analysis, various periods of use of are recorded, with one person claiming use of routes for 60 years. However, few have recorded specific dates of years of use. Of the eight witnesses claiming use of the routes and providing specific years, one claims use of the routes between 1938 and 1948 and of the remaining seven users, the earliest use is 1967 (when the Forest View Drive development was complete and the properties began to be occupied). Use of the claimed routes spans a timeframe from 1944 through to 1999.
- 5.19 Of the 19 individuals claiming use of routes across Ferndown Common, 15 state use for the full 20 year relevant period. A further two individuals used the route for 15 years within this 20 year period and one made use in two years within the relevant period. One users end of claimed use of the routes preceded the relevant period by 31 years, their last claimed use being in 1948.
- 5.20 The earliest recorded use of the claimed route was the year 1938. However, this witness was aged 5 at this time and not deemed to be independent in their use of the route, therefore an adjustment has been made to include their evidence from 1944, when they were aged 11. Two other witnesses claim use of the route prior to an age when they would be deemed independent in their use, therefore the earliest recorded period of use is from 1944 continuing without interruption to the date the route was brought into question.
- 5.21 Officer Comment: Adjusting users evidence for years prior to deemed independent use, there has been continual claimed use of routes across Ferndown Common since 1944. See Appendix 4 Chart to Show Years of Continual Use stating the evidence of the 19 users included in the analysis and excluding evidence of user number 2, as per paragraph 5.6.
- 5.22 Of the 19 users evidence, and during the relevant period of 1979 to 1999, the lowest number of recorded users during the relevant period was 15 in the year 1979, increasing to 17 users in the years 1980 and then continuing at a maximum of 17 user from 1982 until the end of the relevant period.
- 5.23 Of the 19 user evidence forms eligible for analysis, 9 people record their use of routes across Ferndown Common as being daily with the remaining 10 people claiming their use of routes across Ferndown Common as being weekly.

- 5.24 Officer Comment: The frequency of use of routes across Ferndown Common demonstrates a relatively high level of use during the relevant period with the lowest levels of use occurring in the year 1979 of 2,971 (an average of 57.13 uses per week) rising to a maximum number of uses of 3,701 (an average of 71.17 uses per week) from the year 1981 to the end of the relevant period, 1999.
- 5.25 Officer Comment: During the course of a Definitive Map Modification Order investigation, conversations were had with people who had not supplied a user evidence form at the time of the application but have knowledge of the area of the claimed routes. Three people refer to fencing being in the grass area south of St James Road, one person stating *"The horses were there when we moved to our home in 2001. It was known locally as The Paddocks. I remember one of my dogs ran into the paddock area and when I call for them to come back, the barbed wire fencing that ran parallel to the overhead cables caught against the dog's chest"*. Another person who moved to St James Road after the date of the Definitive Map Modification Order recalls *"The area at the end of St James Road was paddocks which at the time had horses and goats grazing on it. I [had] permission to go across the paddock to a further gate on to the common. I entered the field from St James Road by bending through two narrow post and rail fence to the left of the metal gate."*
- 5.26 Officer Comment: Site visits during the investigation identified evidence of old fencing furniture. 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 C adjacent to the boundary bank. All these items of apparent fencing furniture are situated in the proximity of the claimed routes.
- 5.27 None of the 19 witnesses state seeing a gate or gates on the routes claimed on their user evidence forms. Neither did any witnesses record seeing any signs stating 'private' on gates during the relevant period.
- 5.28 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

- 5.29 There is evidence that fencing was erected in areas of Ferndown Common. This fencing is no longer in use, however, the evidence of old fencing is located in areas crossed by the claimed routes.

- 5.30 Officer Comment: The lack of supporting maps to accurately show where 18 of the witness walked as they crossed Ferndown Common and the reliance of one witness on a plan produced for the public consultation has significantly reduced the weight that can be given to the users evidence.
- 5.31 On balance, taking into consideration the witness evidence, it would suggest fencing was a feature in areas across which the claimed routes run. However, none of the witnesses make reference to any obstructions or furniture across the routes they claim to use.
- 5.32 Officer Comment: There is a network of informal routes and recorded public rights of way across Ferndown Common, with a number of different points of access. It is unclear from the user evidence if the routes they are claiming are the same as those on the application, shown A-B-C-D and E-B on Plan T224/25/1.
- 5.33 Officer Comment: There is ambiguous information between the witnesses who completed user evidence forms and made no reference to gates or signs or fencing across or near the claimed routes, and those people who recall fencing being in situ across parts of the areas the claimed routes run and which housed horses and goats, known locally as The Paddocks.
- 5.34 On balance, and taking into consideration the witness evidence from the user evidence forms, there is insufficient evidence to supports the existence of public rights along the claimed routes from Points A-B-C-D.
- 5.35 On balance, and taking into consideration the witness evidence from the user evidence forms, there is insufficient evidence to supports the existence of public rights along the claimed routes from Points E – B.
- 5.36 There is evidence to suggest fencing was in situ across areas crossed by the claimed routes E – B and evidence of fencing lies in close proximity to the area across which claim route A – B – C – D runs.

6 Landowner correspondence (copies available in the case file RW/T224)

- 6.1 During the consultation, the current landowner for Titles DT387162 responded, as well as Dorset Council's Nature Mitigation Team.
- 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,C,D, & E on 29/11/2012. The previous owners were [...] who we understand had owned the land for many years previously. [...] passed away 2 years ago, but [...] has recently confirmed information given to me by [...] at the time of our purchase. This information tallies with my own personal recollection of what was present at the time of our purchase in 2012.

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

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

There was a post and wire fence at Point D on the boundary bank running parallel to the pylon line which defines the eastern boundary of the land owned by the [Ns].

There was also a post and wire fence running from east to west through the site.”

- 6.3 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 1979 – 1999.
- 6.4 Officer Comment: During this same site visit, evidence of historic fencing materials was identified by the current landowner the locations of which appear to be in close proximity to the claimed routes.
- 6.5 Officer Comment: The current landowner offered information during the site visit stating they had employed two people to clear old fencing from across the site once it was under their ownership. They report significant lengths of barbed wire being buried underground as well as sections being left lying overground.
- 6.6 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.*
- 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”.*

6.7 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 the east”

“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 an ARC officer, to give more clarity around fencing at the point of the boundary bank.

- 6.8 Officer Comment: The officer describes walking from the area actively managed by the Amphibian and Reptile Conservation group on land that abuts to the east of the land that the claimed routes run. The officer does not recall whether there was fencing that prevented them from crossing from the land managed by ARC over the boundary bank into the land purchased in 2012. They can recall the land over which the claimed routes run as being overgrown and inaccessible to fire tenders which was a high concern when trying to manage the risks of Heathland fires.
- 6.9 Officer Comment: The presence of metal gates does not constitute a barrier to access if they remain unlocked. It is not known if these gates were locked or unlocked.
- 6.10 A third person provided information gathered by a representative of the previous landowner in use for a High Court appeal against the due process followed during the Town and Village Green registration. This document sites various pieces of correspondence that circulated between the previous landowner and Town and County Council workers in relation to access and management of the land. The supporting documents referred to in the appeal document were not available.

Summary of Landowner correspondence

- 6.11 The current landowner and Dorset Council's Nature Mitigation Officer 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.
- 6.12 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.
- 6.13 Officer Comment: Dorset Council's Nature Mitigation officer does not recall navigating wire fencing when crossing from the parcel of land actively managed by ARC, onto the western parcel of land purchased in 2012 and which is affected by the claimed routes. It is therefore unclear what fencing was in place and during which periods, as described by the current landowner, and the Mitigation Officer.

6.14 Officer Comment: The remnants of fencing furniture and gate posts in the area of the claimed routes, from the electricity pylon and north to St James Road, witnessed on a joint visit with the current landowner suggests fencing was present on the area of Ferndown Common across which the claimed routes run.

6.15 Officer Comment: the evidence of old fencing furniture conflicts with the lack of evidence recorded by the users providing evidence of their knowledge and use of the claimed routes.

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

7.1 East Dorset Ramblers offered their support to the claim and stated “*We have no evidence with regards to points 1, 2 and 3, how-ever, we welcome any footpaths which can be shown as rights of way being recorded as such on the Definitive Map.*”

Summary of Consultation Responses

7.2 The Ramblers offer their support of the claimed routes although provide no evidence of use nor evidence towards the existence of public rights.

8 Analysis of the evidence

8.1 There is evidence of public use of the claimed route since 1944. However, the user evidence put forward is not sufficient to support the claim that the claimed routes have 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 A – B – C – D is capable of being a public right of way at common law, as the aerial photography since 1972 shows a desire line along the route claimed.

The route claimed E – B is not capable of being claimed as there is little definition of the route on the ground in aerial photography.

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

- 8.4 It is considered the earliest date of challenge which brought into question the right of the public to use the claimed route as shown Points A to D and E to B on plan T224/25/1 is the year 1999, the date of the application.

Twenty years use without interruption

- 8.5 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 1944 until 1999. The routes as claimed are open and available. The 20 year relevant period is taken to be from 1979 to 1999.

Without force, secrecy or permission

- 8.6 There is evidence from some witnesses and the current landowner to suggest the routes A – B – C – D and E – B were obstructed by fencing. A lack of mention of fencing by the majority of the user witnesses makes it unclear if force was used to gain access to the claimed routes.
- 8.7 No witness evidence records awareness of any signs to inform them access was not available.
- 8.8 There is little evidence to suggest that use of the routes has ever been because of a landowner's permission.

Use by the public

- 8.9 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.
- 8.10 Evidence has been submitted by 20 witnesses, 19 of whose evidence was included in analysis, stating that use of routes across Ferndown Common have continued from 1944 until 1999. The majority of these users claimed use of routes during the years of the defined relevant period (1979 - 1999). These individuals comprise 'the wider public'. Their combined use over the 20 year period satisfies the legal test. However, it is unclear exactly which routes the users are claiming to have used.

Conclusions under Section 31, Highways Act 1980

- 8.11 It is considered that the requirements of Section 31 have not been satisfied in this case and there is insufficient evidence to support the public have been using the route 'as of right' for a full period of twenty years between 1979 and 1999.

Analysis of the evidence under common law

- 8.12 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

- 8.13 There is insufficient 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 insufficient evidence for the “reasonably alleged” test to be met.
- 9.2 The 1972 aerial photography shows claimed route from Points A - D with a less defined route being apparent for the claimed route from Points E - B.
- 9.3 The quality of the user evidence in the form of witness statements is poor and provides insufficient evidence to support the claim that public rights exist from Points A-B-C-D or from Points E-B.
- 9.4 The available evidence is insufficient for a dedication at common law to be inferred.
- 9.5 Therefore, the recommendation is that the application be rejected and no Order be made.

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

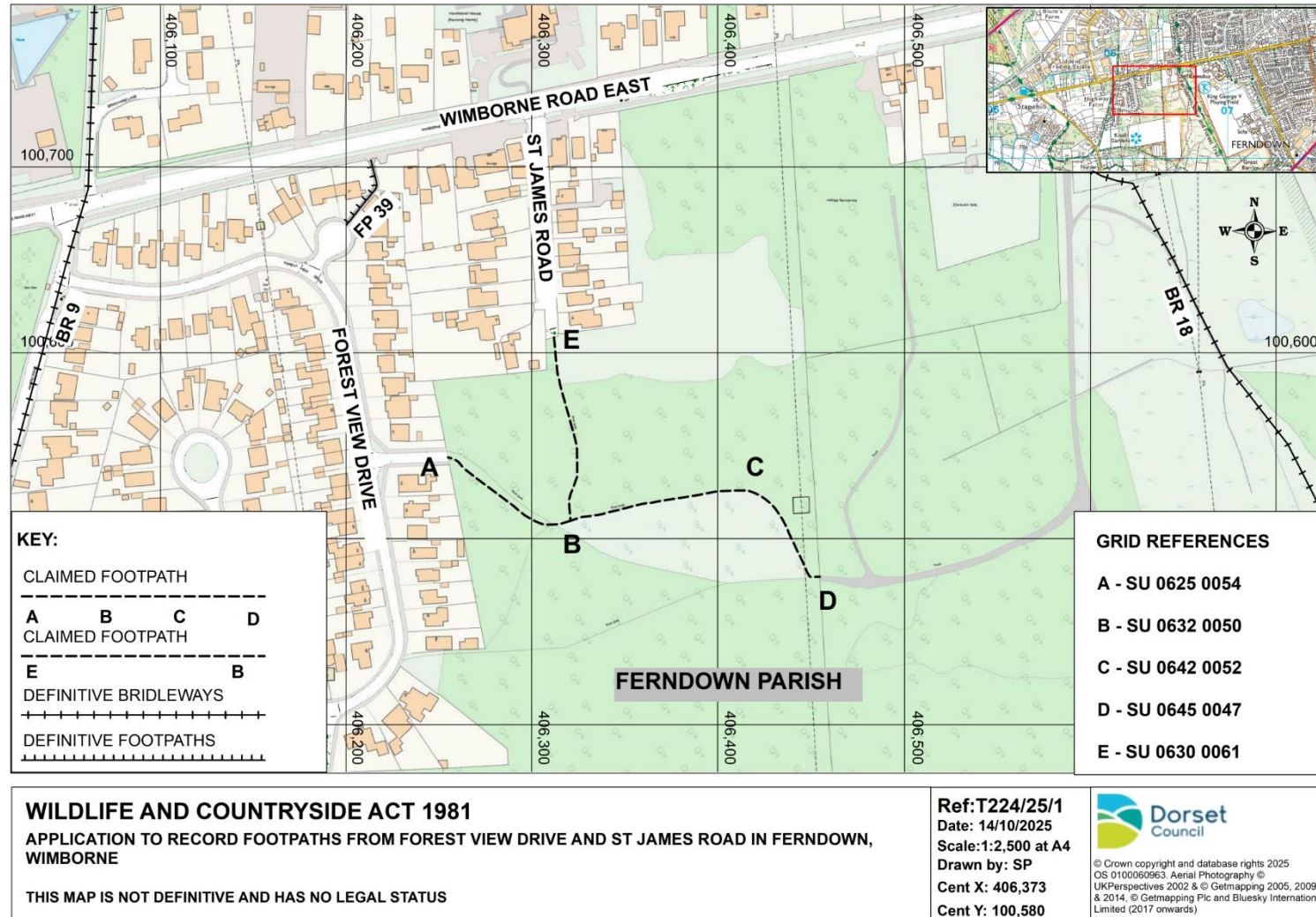
- 1** Drawing T224/25/1
- 2** Law
- 3** Documentary evidence - Extracts from key documents:
 - Finance Act Plan (1910)
 - Ordnance Survey Map (C 19th Century)
 - Extract of Current Definitive Map (1989)
 - 1972 Aerial photography
 - 1997 Aerial photography
 - 2002 Aerial photography
 - Sales Particulars
 - Extract of Registered Town and Village Green Plan
- 4** Charts to show periods and level of use

19 Background Papers

The file of the Executive Director, Economy and Environment (ref. RW/T224).

Date: July 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

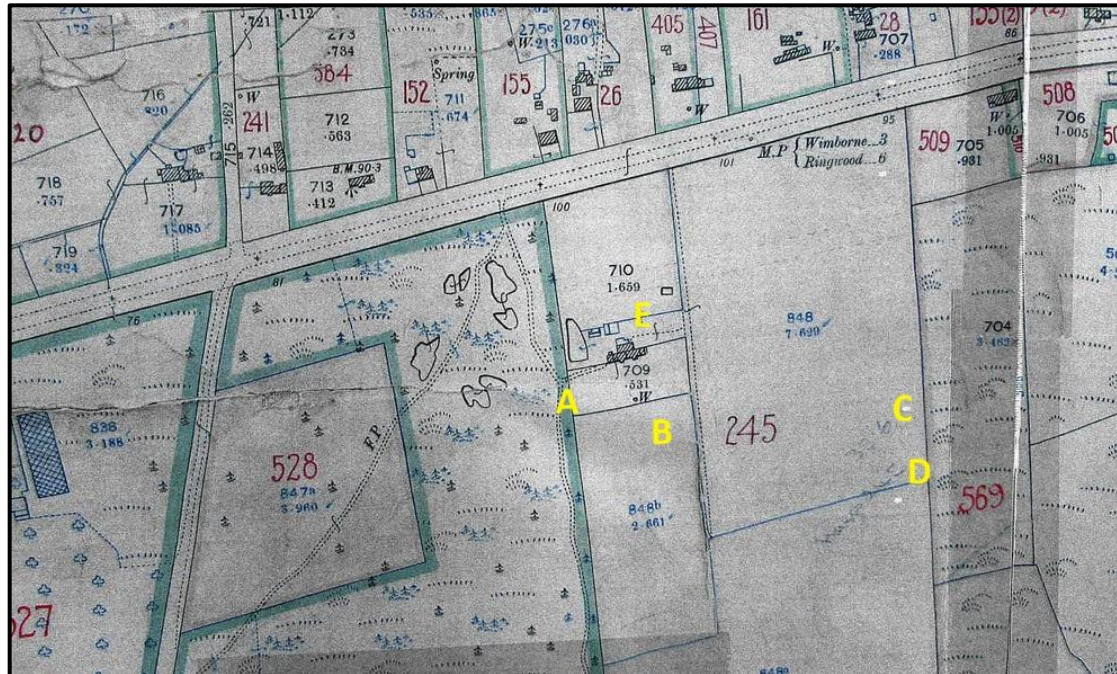
deduction would be made in respect of the public right of way.

5 National Parks and Access to the Countryside Act 1949

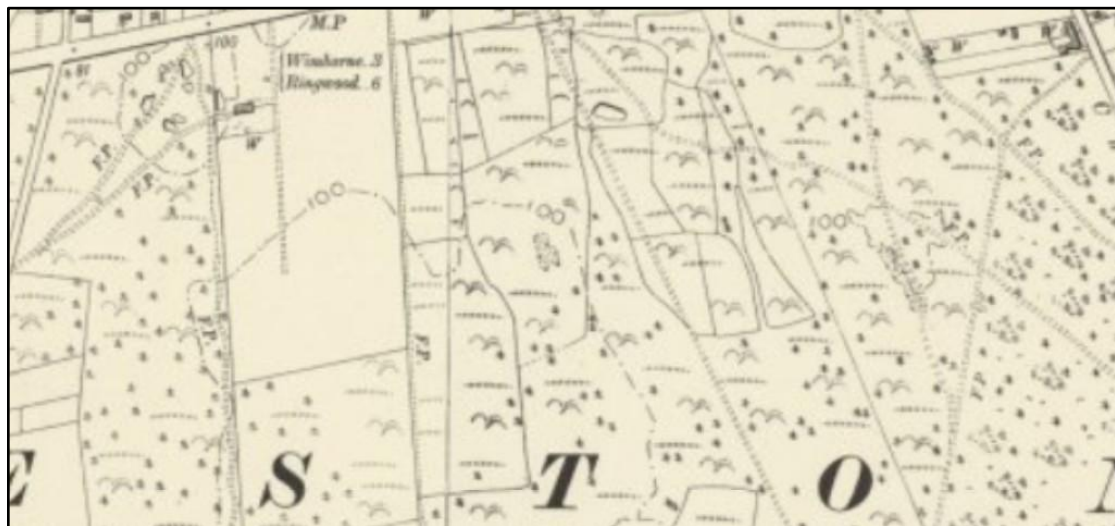
- 5.1 The National Parks and Access to the Countryside Act 1949 required the County Council as “Surveying Authority” to compile the record of the public rights of way network and the District and Parish Councils were consulted to provide the County Council with information for the purposes of the survey.

Documentary evidence considered

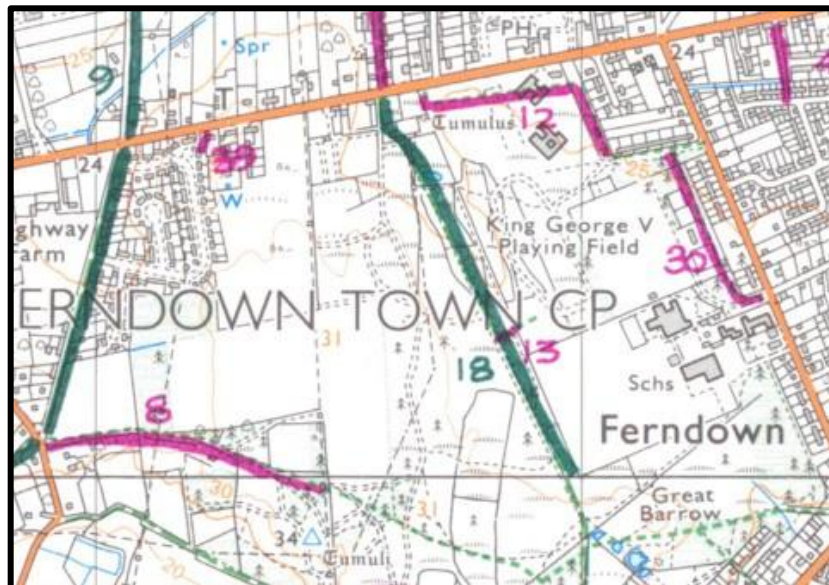
Finance Act Plan (1910)



Ordnance Survey



Current Definitive Map (Sealed 1989)



Aerial Photography (1972)



Aerial Photography (1997)



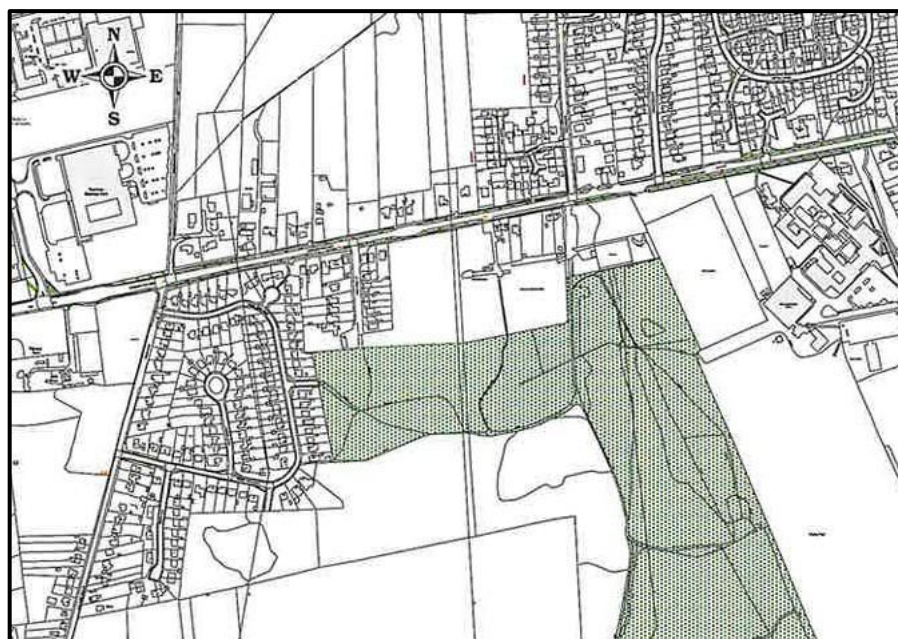
Aerial Photography (2002)

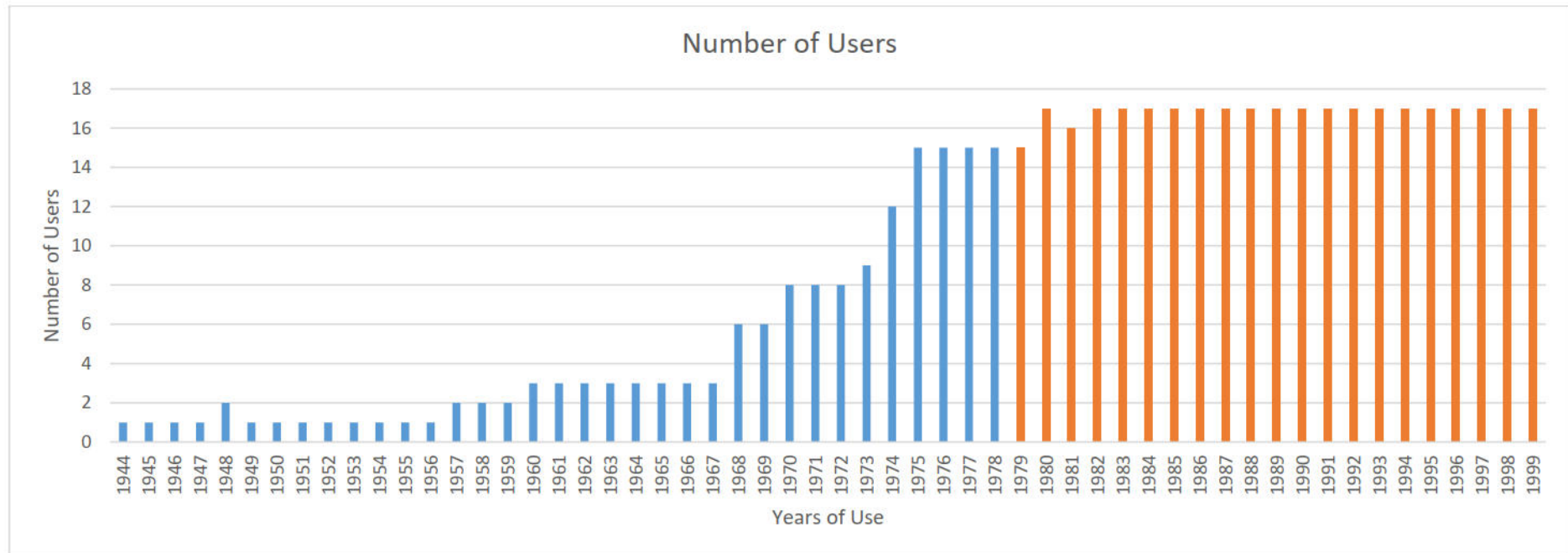


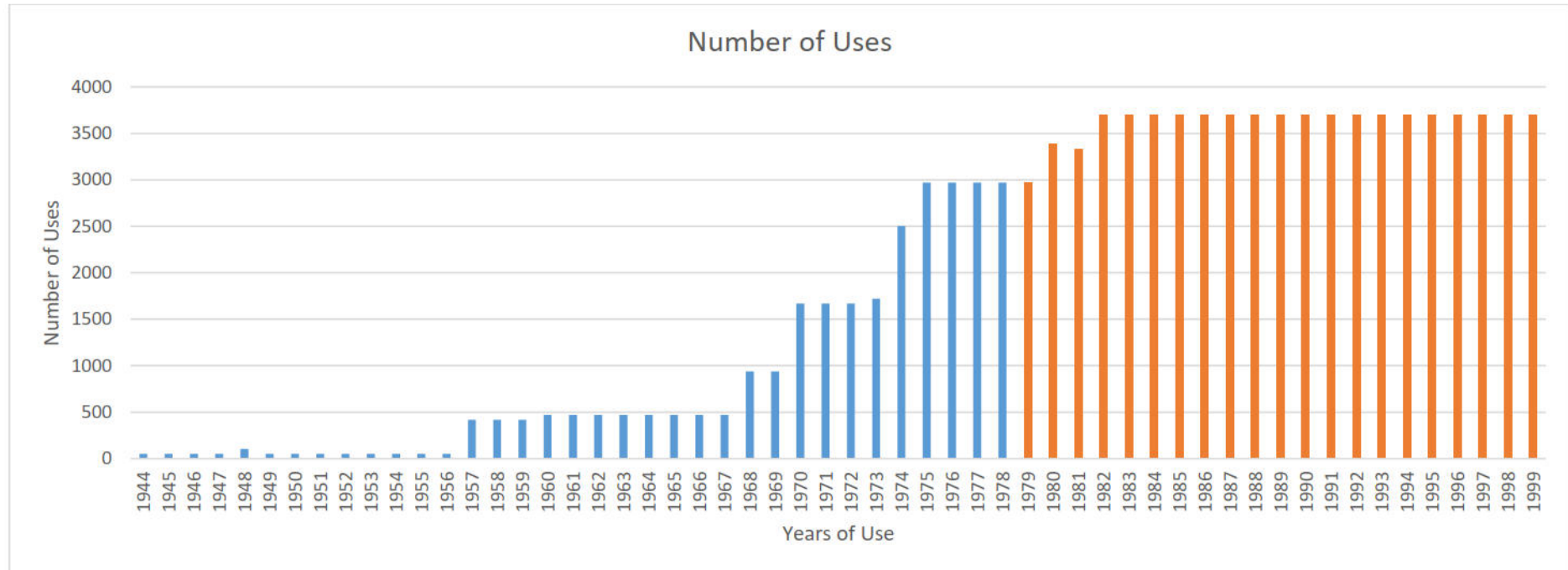
Sales Particulars (Circa 2011)



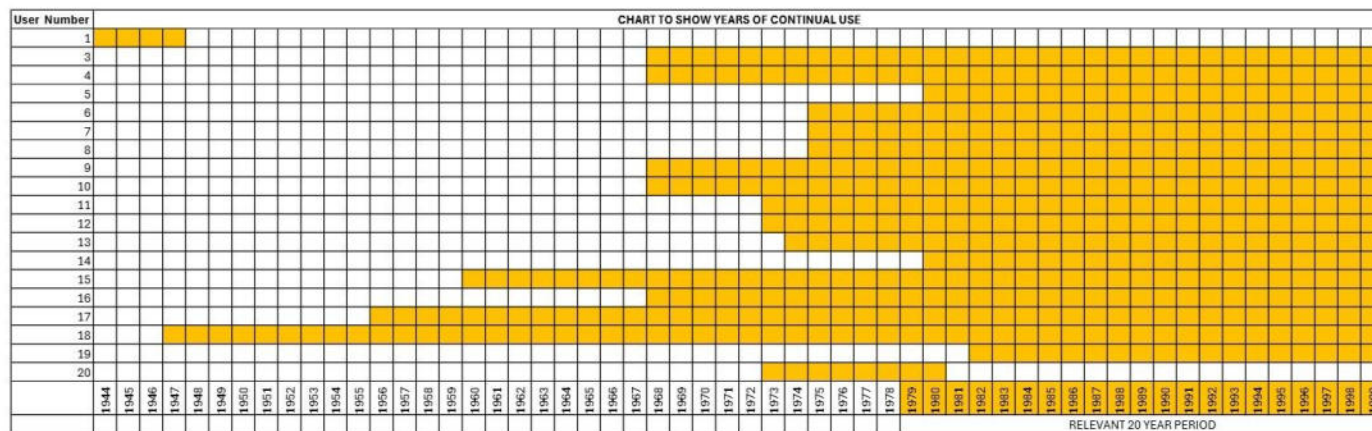
Extract of Registered Town and Village Green Plan



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

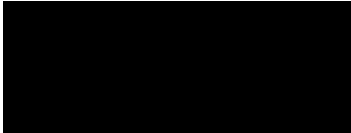
APPENDIX 4**Chart to show frequency of use****20 YEAR PERIOD**

YEARS ROUTE USED	
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Recommendations accepted:

Signed:



Date:...30 July 2026.....

Vanessa Penny

Definitive Map Team Manager

Spatial Planning

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