

## HAMPSHIRE COUNTY COUNCIL

### Officer Decision Record

<b>Decision Maker</b>	Jonathan Woods <i>Countryside Service Strategic Manager</i>
<b>Title</b>	Application for a Definitive Map Modification Order to record two public footpaths between Penton Mewsey Footpath 4 and Bridleway 8  Parish of Penton Mewsey
<b>Reference</b>	DMMO 1198

**Tel:** 0370 779 0383

**Email:** Jennifer.holden-warren@hants.gov.uk

#### 1. The decision:

- That the application for a Definitive Map Modification Order (DMMO) to record two public footpaths in the parish of Penton Mewsey (see attached plan) should be partially accepted. Public footpaths should be recorded between Points A and B, and between Points B-E-F.
- The width of the route should be 1.5 metres between Points A and C and a variable width of between 5 and 8.3 metres between Points B-E-F.
- No route should be recorded between Points C and D, as this route is subject to a diversion and extinguishment Order made by Test Valley Borough Council under the provisions of the Town and Country Planning Act (1990).

#### 2. Reason(s) for the decision:

- The application, which relies on documentary evidence, was submitted in 2017 by a representative of The Ramblers.
- The documentary evidence demonstrates that parts of the claimed route have existed since 1759 when Route 2 (between Points B-E-F) was depicted on Taylor's Map of Hampshire.
- The tithe documents provide the most compelling evidence and indicate that the route appears to have been considered a public right of way in 1837 when the documents were produced. The route is also clearly shown on three editions of the Ordnance Survey County Series maps, although only a part of the route is shown on the fourth edition, which may suggest that the route was not in regular use at this time. Other contemporaneous documents, including the highway handover and maintenance maps, and documents relating to the production of the first Definitive Map, appear to suggest that the route was not considered to be a public right of way at this time.
- No Orders relating to an historic diversion, extinguishment or stopping up of this route have been discovered and it therefore appears that there is a reasonable allegation that a public right of way subsists along the alignment of the claimed route.

- Route 3 (between Points C-D) is currently being diverted by Test Valley Borough Council (no objections to their Order have been received, and confirmation will follow in due course).
- Higher rights than that of a public footpath may subsist along Route 2, but it is not possible to record these, as a right of way generally cannot be a cul-de-sac, and there is no onward route beyond Point B.

### **3. Consultations:**

The following people and organisations have been consulted on this application: Penton Mewsey Parish Council, Test Valley Borough Council, the Ramblers, the Open Spaces Society. Additionally, the County Council Members for Andover West, Councillor Zilliah Brooks (to May 2021) and Councillor Christopher Donnelly (elected, May 2021), have been made aware of the application. Where responses were provided, these are set out below.

#### Penton Mewsey Parish Council

Penton Mewsey Parish Council responded to the consultation to note that the northern section of the route was subject to a separate Order from Test Valley Borough Council.

In reference to Route 2, the parish council noted that there is already a public footpath which provides a connection to Footpath 6; *“therefore we would see no difference in marking out another / or alternate route as marked on the plan”*.

They observe that the existing public footpath “is used by many walkers”.

No comments were made about the rest of the claimed route.

#### Cllr Christopher Donnelly

Cllr Donnelly supported the application.

### **4. Comments by the Landowners**

There are two groups of landowners whose land is affected by the application. One group (Landowner A), who own the majority of the claimed route, was represented by a land agent and the other group (Landowner B), who own the southernmost sections of the route, represented themselves.

The following comments were made during the consultation:

#### Landowner A

An agent acting for Landowner A referred to correspondence submitted at the time the application was received. A summary of the main points within the three letters is provided below:

- A letter from the land agent stated that the application gives little consideration to the lie of the land, including the impact on crops, mature hedgerows and wooded areas, in addition to the conservation status of the land.
- A letter from the landowner objected to the application due to the impact on the land. He stated that no consultation had been undertaken prior to the application being submitted and none of the claimed route had been walked by the public within living memory.
- The contract farmer also wrote a letter. He stated that the application route was ‘utterly absurd’, echoing the comments made regarding disruption to the crops, hedges and undergrowth, and the implications for stewardship and conservation. The farmer stated that existing rights of way in this area are already burdensome.

The land agent instructed a solicitor who, in turn, engaged a documentary evidence specialist. The specialist reviewed the evidence and conducted their own research, and a transcript of the Quarter Sessions Record of June 1857 was supplied to the investigating officer; this is reviewed below. No additional comments were received and no commentary to the Quarter Sessions document was provided.

**Landowner B**

Landowner B provided a verbal response to the consultation. They oppose the application and consider the route, particularly Route 2, to be unnecessary. They feel that the rights of way network in the local area is perfectly adequate and that the claimed route would be unnecessary because people now walk for leisure rather than necessity - this means that a given route does not always need to be the most direct. Furthermore, the landowner stated that the route would be disruptive to the agricultural purpose of the fields. Additionally, gaps would need to be made in the hedges at the field boundary at a points A and E.

**5. Other options considered and rejected:**

N/A

**6. Conflicts of interest:**

None.

**7. Dispensation granted by the Head of Paid Service:**

N/A

**8. Supporting information:**

- Location Map
- Full Officer Report
- Documentary Evidence

**Approved by:**

**Date:**

\_\_\_\_\_

**15 July 2021**

**Jonathan Woods – Countryside Access Group Leader**

**On behalf of the Director of Culture Communities and  
Business Services**

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.</b>	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
Claim Reference: DMMO 1198	Countryside Access Team Castle Avenue Winchester SO23 8UL

## **IMPACT ASSESSMENTS:**

**1 Equalities Impact Assessment: N/A**

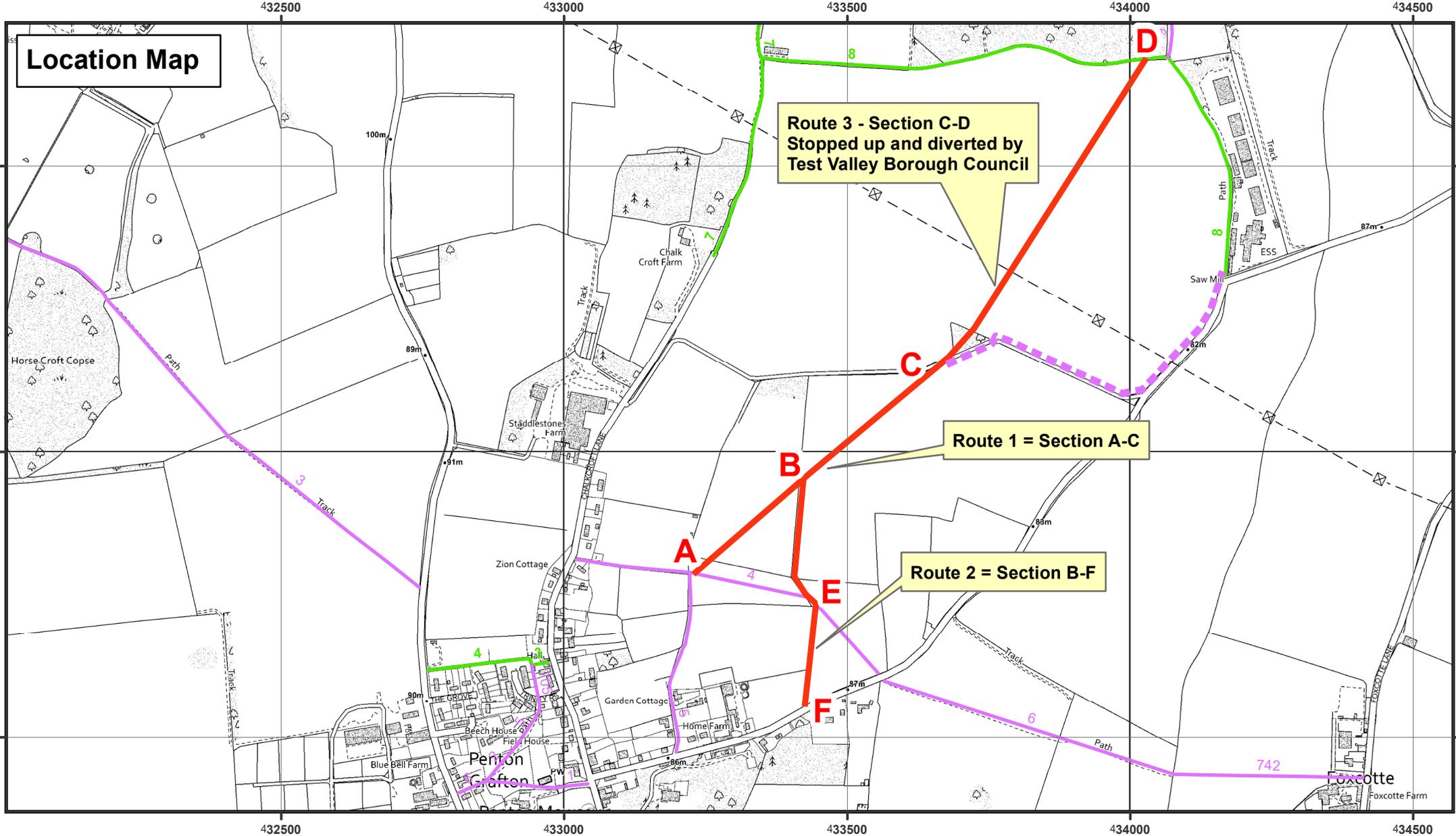
**2. Impact on Crime and Disorder: N/A**

**3. Climate Change:**

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

**This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.**



**Location Map**

**Route 3 - Section C-D  
Stopped up and diverted by  
Test Valley Borough Council**

**Route 1 = Section A-C**

**Route 2 = Section B-F**



**Application for a Map Modification Order to record  
a footpath between Footpath 4 to Bridleway 8**

**Parish of Penton Mewsey**

**LEGEND**

- **Claimed route**
- **Public Footpath**
- **Public Bridleway**
- - - - - **Public Footpath created under the  
Town and Country Planning Act**

**1:9,000**

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## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Jonathan Woods <i>Countryside Service Strategic Manager</i>
<b>Date:</b>	15 July 2021
<b>Title:</b>	Application for a Definitive Map Modification Order to record two public footpaths between Penton Mewsey Footpath 4 and Bridleway 8 Parish of Penton Mewsey

**Contact name:** Jennifer Holden-Warren

**Tel:** 0370 779 0383

**Email:** Jennifer.holden-warren@hants.gov.uk

#### **Purpose of this Report**

1. The purpose of this report is to assist the Countryside Service Strategic Manager in determining whether to accept an application for a Definitive Map Modification Order to record two public footpaths in the parish of Penton Mewsey.

#### **Recommendation(s)**

2. That authority is given for the making of a Definitive Map Modification Order to record two footpaths between Points A-C and Points B-E-F, as shown on the attached plan. The width of the routes will be 1.5 metres between Points A and C and a variable width of between 5 and 8.3 metres between Points B-E-F.
3. That no Order should be made in relation to the route between Points C and D, as this route is subject to a diversion and extinguishment Order under the provisions of the Town and Country Planning Act 1990.

#### **Executive Summary**

4. This is an application made by a representative of The Ramblers ('the applicant') in 2017 under Section 53 of the Wildlife and Countryside Act 1981, to record two public footpaths in Penton Mewsey. The application is supported by historic documentary evidence that the applicant believes demonstrates that a public right of way should be recorded.
5. Having considered the evidence submitted with the application, and undertaken additional research of historic documentary evidence, it is considered that there are sufficient grounds to record two footpaths along the claimed routes.
6. Part of the route (Route 3, between Points C and D) was stopped up by Test Valley Borough Council under the provisions of the Town and Country Planning Act 1900 to facilitate the development of the land for the purposes of establishing a solar farm. This investigation has therefore focused on the parts

of the route to the south to Point C (Route 1, Points A-C and Route 2, Points B-F).

## **Legal framework for the decision**

WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 53: Duty to keep definitive map and statement under continuous review

(2) As regards every definitive map and statement, the surveying authority shall:

a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

b) .... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order

make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows...

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;

TOWN AND COUNTRY PLANNING ACT 1990 – Section 257: Footpaths, bridleways and restricted byways affected by development: orders by other authorities.

(1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—

(a) in accordance with planning permission granted under Part III or section 293A, or

(b) by a government department.

## **RELEVANT CASE LAW**

Attorney General v Antrobus (1905)

The judge stated that “a public path is prima facie a road that leads from one public place to another public place”.

Moser v Ambleside Urban District Council (1925)

The ruling established that a cul-de-sac highway could exist if it led to a place of “popular resort”.

Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs & Another (2012)

This case examined whether a route which is not connected to another public highway or place of public access could be a public highway. The judgement states that case law on this topic, taken as a whole, demonstrates that a highway should connect to another highway, or to “land to which the public have a right of access.”

**Description of the Claimed Route (please refer to the map attached to this report)**

7. The claimed route commences at a junction with Penton Mewsey Footpaths 4 and 5 (Point A), it continues in a north-easterly direction across fields and through hedgerows to a farm track (Point C). The route continues through a small copse and across a field to a junction with Penton Mewsey Bridleway 8 (Point D).

A spur of the claimed route commences at a junction with Newbury Hill (public highway U62, Point F) and continues in a northerly direction along field boundaries to a junction with Penton Mewsey Footpath 4 (Point E). The claimed route then continues alongside Penton Mewsey Footpath 4 for a short distance before diverging and continuing in a northerly direction to meet the main section of the claimed route at Point B.

8. For ease of reference within this report, Points A-C will be referred to as Route 1, Points B-F will be described as Route 2 and Points C-D will be referenced as Route 3.
9. Any rights which may have subsisted along Route 3 were formally stopped up and diverted by Test Valley Borough Council in 2021 under the provisions of the Town and Country Planning Act 1990 to facilitate the development of a solar farm. An alternative footpath was provided around the field edge, connecting the claimed route with Penton Mewsey Bridleway 8.
10. The entire length of the claimed route is approximately 1.6 kilometres.
11. The length of the sections of the claimed route as described above is as follows:
  - Route 1 – 589 metres
  - Route 2 – 412 metres
  - Route 3 – 629 metres
12. The land over which the claimed route runs is owned by two groups of landowners.

### **Issues to be decided**

13. The primary issue to be decided is whether there is clear evidence to show that public rights subsist or are 'reasonably alleged' to subsist. Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an order should be made so that the evidence can be tested at a public inquiry. Officers do not consider that there is such a conflict in this case.
14. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an Order changing the Definitive Map is made, it must be demonstrated that any change to the map is supported by evidence.

This might be proved by historic documentary evidence or by evidence of use in the recent past.

15. If a right of way is considered to subsist or reasonably alleged to subsist, then the route, status and width of that way must also be determined, and authority for the making of an Order to record that right on the Definitive Map should be given.
16. Where a Map Modification Order is made, the process allows for objections to the Order to be made. Further evidence could potentially be submitted for examination along with an objection. In these circumstances, the County Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State.
17. Where an Order has been made, and no objections to the Order are received, the County Council can confirm the Order. In the event of an application under Section 53 being refused, the applicant has the right to appeal against the County Council's decision to the Secretary of State, who may direct the County Council to make the order that is sought.

### **Background to the Application**

18. The application was submitted in 2017 by a representative of The Ramblers. Due to a backlog of applications the matter was not taken up for investigation at the time.
19. This application is one of a considerable number of applications submitted to the County Council by The Ramblers. The applications have been researched and compiled following the deadline of 1 January 2026 (introduced in the Countryside and Rights of Way Act, 2000) for adding historic rights of way to the Definitive Map.
20. The applicant provided copies of the following documents with their application:
  - a. Ordnance Survey Old Series (c.1817)
  - b. Greenwood's Map of Hampshire (1826)
  - c. Penton Mewsey Tithe Map (1837)
  - d. Ordnance Survey 'County Series' Maps – 25 inches to the mile (1873-1946)
  - e. Conholt Park and Penton Manor Estates Sales Brochure (1897)
  - f. Sales Particulars for 'Foxcotte', 'Penton Manor' and Chalcroft Farms (1925)
  - g. Ministry of Food National Farm Survey (1941-2)

### **Consultations**

21. The following people and organisations have been consulted on this application: Penton Mewsey Parish Council, Test Valley Borough Council, the Ramblers, the Open Spaces Society Additionally, the County Council Members for Andover West, Councillor Zilliah Brooks (to May 2021) and

Councillor Christopher Donnelly (elected, May 2021), have been made aware of the application. Where responses were provided, these are set out below.

## 22. Penton Mewsey Parish Council

Penton Mewsey Parish Council responded to the consultation to note that the northern section of the route was subject to a separate Order from Test Valley Borough Council.

In reference to Route 2, the parish council noted that there is already a public footpath which provides a connection to Footpath 6; *“therefore we would see no difference in marking out another / or alternate route as marked on the plan”*. They observe that the existing public footpath “is used by many walkers”.

No comments were made about the rest of the claimed route.

## 23. Cllr Christopher Donnelly

Cllr Donnelly supported the application.

### **Comments by the Landowners**

There are two groups of landowners whose land is affected by the application. One group (Landowner A), who own the majority of the claimed route, was represented by a land agent and the other group (Landowner B), who own the southernmost sections of the route, represented themselves.

The following comments were made during the consultation:

#### Landowner A

An agent acting for Landowner A referred to correspondence submitted at the time the application was received. A summary of the main points within the three letters is provided below:

- A letter from the land agent stated that the application gives little consideration to the lie of the land, including the impact on crops, mature hedgerows and wooded areas, in addition to the conservation status of the land.
- A letter from the landowner objected to the application due to the impact on the land. He stated that no consultation had been undertaken prior to the application being submitted and none of the claimed route had been walked by the public within living memory.
- The contract farmer also wrote a letter. He stated that the application route was ‘utterly absurd’, echoing the comments made regarding disruption to the crops, hedges and undergrowth, and the implications for stewardship and conservation. The farmer stated that existing rights of way in this area are already burdensome.

The land agent instructed a solicitor who, in turn, engaged a documentary evidence specialist. The specialist reviewed the evidence and conducted their own research, and a transcript of the Quarter Sessions Record of June 1857 was supplied to the investigating officer; this is reviewed below. No additional comments were received and no commentary to the Quarter Sessions document was provided.

## Landowner B

Landowner B provided a verbal response to the consultation. They oppose the application and consider the route, particularly Route 2, to be unnecessary. They feel that the rights of way network in the local area is perfectly adequate and that the claimed route would be unnecessary because people now walk for leisure rather than necessity - this means that a given route does not always need to be the most direct. Furthermore, the landowner stated that the route would be disruptive to the agricultural purpose of the fields. Additionally, gaps would need to be made in the hedges at the field boundary at a points A and E.

## **Documentary Evidence**

*Documents held in archives, whether Hampshire Record Office, the National Archives, or online archive collections, are marked by an 'A'*

*Where held, images of documentary sources are contained within Appendix 2.*

### 24. Taylor's Map of Hampshire (1759) (A<sup>1</sup>)

The map shows a short route which bears northwards from the Newbury Hill road. The route is open-ended and is not shown as connecting with any other routes; the alignment appears to be consistent with Route 2 (especially when compared alongside the Ordnance Survey Old Series map described below). No other part of the claimed route is depicted, as this map does not show minor paths.

This document provides evidence that Route 2 was in existence at this time. Although as it is not possible to make inferences about whether the public had a right of access along it, the document provides limited support to the application in respect of Route 2.

### 25. Ordnance Survey Old Series (c.1817) (A)<sup>2</sup>

Route 2 is clearly depicted on the map, identifiable by its location and the distinctive alignment at Point E. Whilst no legend was published with the Old Series, a legend has subsequently been compiled by Dr Richard Oliver (University of Exeter) and has been published on the Cassini website<sup>3</sup>. The legend shows that the Old Series depicted three types of roads: turnpikes or main roads, other roads, and unfenced roads. Route 2 is depicted as an 'other road', suggesting that it was an enclosed route of a lesser status than a turnpike or main road. The northwards continuation of Route 2 (beyond Point B) is depicted as an unfenced road; this continuation adjoins a route which is also depicted as an 'other road', which is currently recorded as Penton Mewsey Bridleway 8.

Whilst Ordnance Survey maps are not proof of the status of the route, this document lends some support to part of the application insofar as it shows that Route 2 has existed since at least 1817. The fact that the route is depicted as connecting with

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<sup>1</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshiremapped.org.uk/hantsmap/taylor4/TY35.htm>

<sup>2</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshiremapped.org.uk/hantsmap/ordnce6/oss25f.htm>

<sup>3</sup> [Cassini Maps - Cassini Maps - Map Keys and Legends](#)

another apparent road may suggest that Route 2 was in use by the public at this time. As the map does not appear to show pedestrian paths, no inferences can be made about the omission of Routes 1 and 3.

#### 26. Greenwood's Map of Hampshire (1826) (A)<sup>4</sup>

The depiction of the area largely matches the depiction shown on the Ordnance Survey Old Series. Route 2 is clearly depicted as a route enclosed by solid lines, which the legend describes as a 'cross road'. In common with the depiction on the Old Series, beyond Point B the route is depicted with pecked lines; whilst the legend does not differentiate between these styles of road, the differentiation indicates that, beyond Point B, the route changed in character, and appears to indicate that the northern section of the route was unfenced. As on the Old Series depiction, the map does not show pedestrian paths and Routes 1 and 3 are not shown.

This document provides limited support to the application: the map demonstrates that Route 2 existed at this time, but it does not show whether the public had a right of access along it. The document does not provide any evidence in relation to Routes 1 and 3.

#### 27. Penton Mewsey Tithe Records (1837) (A)<sup>5</sup>

Tithe maps and apportionment awards were created following the Tithe Commutation Act (1836), which sought to update the historic arrangement of landowners making payments in kind to the church, instead requiring them to pay a monetary payment. The maps and awards were created to calculate the value of the land in order to ascertain how much money the landowner should contribute to the church.

The claimed route is within the area covered by the Penton Mewsey tithe and all routes are shown on the tithe map. Routes 1 and 3 are depicted with a pecked line crossing eight land parcels owned by four separate owners. The land parcels are named and described in the apportionment: each is described as 'arable' and the field names are North Field, Parsonage Down, Cully Wood Down and Coppice Ground. No legend is included with the map, but the applicant has referred to a House of Commons document<sup>6</sup> produced by Lt Dawson in 1837 which sets out a standardised symbology for tithe maps. The document shows that a footpath is depicted by a single pecked line; it is therefore reasonable to infer that Routes 1 and 3 were probably considered footpaths at this time.

Route 2 is clearly depicted as a white route enclosed by a pair of solid lines; this is in the same style as other routes in the area which are currently public vehicular highways, including Chalkcroft Lane and Newbury Hill. According to the Dawson convention described above, this depiction appears to be consistent with a by-road or crossroad. Route 2 is open-ended at the junction to Newbury Hill and has been allocated parcel number 130; this parcel number is absent from the

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<sup>4</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshireremapped.org.uk/hantsmap/grnwood2/grw45f.htm>

<sup>5</sup> Hampshire Record Office Reference numbers – 21M65/F7/186/2 and 21M65/F7/186/1

<sup>6</sup> Available from the National Archives. Lt R K Dawson's Recommended Conventional Signs for use on Tithe Maps, House of Commons Sessional Papers 1837 (103) XLI 383.

apportionment. The parcel numbers allocated to other routes which are currently public roads are also absent from the apportionment, which includes a section for 'roads and waste' at the end. The likely omission of these apparent roads from the apportionment may indicate that they were public roads and not subject to tithe charges at this time. In the case of Route 2/parcel number 130, the route forms a cul-de-sac and it is therefore possible that it may have been omitted from the apportionment as it could have been an occupation road serving the adjacent land parcels. However, the applicant lists the apportionment details for the parcels surrounding the route and suggests that it was "in all likelihood public" because the route enabled seven different individuals to access land of which they were listed as the owner or occupier.

This document provides strong evidence in support of Routes 1 and 3 being public footpaths and Route 2 being a public road at the time this document was produced.

#### 28. Quarter Sessions Records (1857) (A)<sup>7</sup>

The solicitor acting for one of the landowner's agents provided a copy of the Quarter Sessions record of 1857 (included in Documentary Evidence Appendix). The original document was also reviewed during this investigation.

The document describes the "stopping up, diverting and turning of a certain Public Highway and a certain Public Footpath" in Penton Mewsey. The map which accompanies the description is missing, but the route is described in detail using field names which largely correspond to those contained within the Tithe Apportionment. From the field names (Jennings Meadow, Jennings, Home Field, Path Acre, Path Piece, and Smiths Thorn), it is apparent that there is no correlation between this route and the claimed route as these fields can be located in the Penton Mewsey tithe documents and are not situated along the claimed route. This document therefore provides no evidence that the claimed route was stopped up or diverted at this time.

Other records relating to the Quarter Sessions were reviewed and no references to the claimed route were discovered.

#### 29. Ordnance Survey Maps - County Series (25 inches to 1 mile) – 1873 – 1946 (A)<sup>8</sup>

Four maps were published by the Ordnance Survey at a scale of 25 inches to 1 mile between 1873 and 1946.

On the first edition (1873), Route 2 is depicted in the style of a road; it is annotated 'Northfield Drove' and the parcel is numbered 54. The accompanying book of reference describes parcel 54 as a road. Routes 1 and 3 are depicted with pecked lines, which is the same depiction of other nearby routes which are currently public footpaths, including Footpaths 4 and 5.

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<sup>7</sup> Hampshire Record Office Reference number – Q1/44

<sup>8</sup> Available from the National Library for Scotland. Copies also held by Hampshire Record Office.

The depictions on the second and third editions (1894 and 1909) match that shown on the first edition. The only change is that Routes 1 and 3 are here annotated 'FP', which confirms that the path was used by pedestrians at this time.

On the fourth edition (1946), Route 1 is still depicted by pecked lines marked 'FP', but Northfield Drove (Route 2) and Route 3 are no longer shown, although the distinctive alignment of Route 2 is still visible in the field boundaries.

The Ordnance Survey surveyors marked what they observed on the ground; therefore, whilst a route may be shown as a 'footpath', this means that although it had the appearance of being a path used by pedestrians, it does not necessarily mean that there was a public right of way along the route (for example, the individuals using the route may have been doing so in exercise of a private right). As such, the maps carry a disclaimer that the depiction of a path does not reflect public rights of access. However, as the route shown on these maps corresponds with the alignment of the routes shown on the Tithe Maps and because other routes depicted as footpaths on these maps are currently public rights of way (such as the current Penton Mewsey Footpaths 4 and 9), these documents appear to collectively provide strong evidence that the claimed routes were previously public rights of way. Furthermore, it is significant that Route 2 is named as Northfield Drove – named roads on maps at this time were generally public highways, and 'drove' may suggest that the route was set out as a public drove road at some point (the inclosure award for this area has not been discovered).

The apparent width of the claimed route (determined by the distance between the boundary lines on the third edition) is around 1.5 metres for Routes 1 and 3, and a variable width of between 5-8.3 metres for Route 2.

### 30. Sales particulars of Conholt Park and Penton Manor Estate (1897) (A)<sup>9</sup>

Two plans are included with these sales particulars. The overview plan shows Route 2 as a white route enclosed by solid lines, indicating that it is separate to the shaded land parcels; the adjacent track which is now Penton Mewsey Footpath 5 is depicted in the same way. Newbury Hill Road and Chalkcroft Lane are also depicted with solid lines but have been shaded in sepia.

An inset plan (shown below the larger plan in the Documentary Evidence document) provides an enlargement of the village. On this plan, both Route 2 and the current Penton Mewsey Footpath 5 are shaded in sepia, in common with roads which are currently public highways.

This document was not produced for the purposes of actively reflecting public rights of way at this time, but it nonetheless provides some support for the application in relation to Route 2.

### 31. Sales particulars of Foxcotte, Penton Manor and Chalcroft Farms, Penton Mewsey and Charlton (1897) (A)<sup>10</sup>

The plan shows the claimed route clearly. The depiction of the area matches that shown on the Ordnance Survey second and third edition maps; whilst the map is

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<sup>9</sup> Hampshire Record Office Reference number – 46M84/F75/2

<sup>10</sup> Hampshire Record Office Reference number – 46M84/F75/4

stylistically similar to the Ordnance Survey maps, it appears to be a bespoke map created specifically for the purposes of this sale; it is therefore significant that the claimed routes are clearly depicted on the plan. Route 2 is enclosed by solid lines and shown in the same style as nearby roads. Routes 1 and 3 are depicted with a pair of pecked lines which are marked 'FP'. Route 3 crosses an area shaded in green and marked 'Lot 5'; the applicant suggests that footpaths were considered to devalue the land and "it would therefore have been highly unlikely that the vendor would include footpaths on the plan unless they were officially documented".

As with the previous sales particulars, these documents were not produced for the purposes of providing a record of rights of way, but they still provide support for the application insofar as they show that the landowner at this time considered the routes to exist and included them on a plan created for the sale of the land (even though doing so may have had a detrimental impact on the land value).

32. Book containing schedules and plans, by parish, of roads in Andover Highway District (mid-late 19<sup>th</sup> century) (A)<sup>11</sup>

No minor routes are contained on this plan, and it is therefore unsurprising that Routes 1 and 3 are not depicted. Route 2 has also been omitted; this may be because the route was not being publicly maintained at this time, or it is possible that it has not been included on this plan because it is a cul-de-sac route.

33. Andover Rural District Council Highway Handover Map (1929) (A)<sup>12</sup>

Highway handover maps were prepared when responsibility for highways transferred from rural district councils to county councils under the Local Government Act (1929). The maps, which use one of the Ordnance Survey county series maps as the base map, indicated which highways were maintainable by the County Council, and also indicated routes which were not considered to be the responsibility of the highway authority.

The claimed route has not been annotated on this map, which may indicate that the route was not considered to be a public right of way at the time the map was produced. However, no routes other than roads appear to have been marked in this locality; this is unusual for handover maps, which usually show highways of all statuses, and other routes in the area which are currently public rights of way and which were depicted on the First Definitive Map in 1957 (such as Penton Mewsey Footpaths 4 and 5 and Bridleways 7 and 8) are also omitted from the handover map. This document therefore provides neutral evidence for the application.

34. Ministry of Food National Farm Survey (1946) (A)<sup>13</sup>

The applicant provided copies of this document from the National Archives, and it has not been possible to review the original documents during this investigation. The map uses an Ordnance Survey plan for the basemap and shows

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<sup>11</sup> Hampshire Record Office Reference number – 17M73/DH4

<sup>12</sup> Hampshire Record Office Reference number – H/SY3/6/3

<sup>13</sup> Available from the National Archives. Reference number – MAF 73/15/23

landholdings outlined in coloured pencil. Parts of the claimed route are visible on the basemap, which only covers the southern part of the route.

The land surrounding Route 2 is shaded in pale blue pencil and the applicant states that Route 2 has been omitted from the shaded parcel in common with other 'unproductive land', such as highways and rivers. Between Points B and E, it appears that the blue shading goes over Northfield Drove. Due to the very pale shading of the landholding, and because it has not been possible to view the original document, it is not possible to be certain about whether any or all of Route 2 or omitted from the shading of the landholding. This document therefore provides neutral evidence for the application.

#### 35. Highways Maintenance Map, Andover Division (1946) (A)<sup>14</sup>

Highway maintenance maps were produced following the responsibility for highways being transferred to county councils; the maps show the highways maintained by Hampshire County Council at the time.

As on the Handover Map, no part of the claimed route has been annotated on this map. This may indicate that the route was not considered to be publicly maintainable at this time, although it is notable that no public rights of way have been included in this locality, which appears to only show vehicular highways. This document provides neutral evidence for the application route.

#### 36. Documents relating to the National Parks and Access to the Countryside Act (1949)

The National Parks and Access to the Countryside Act (1949) required surveying authorities to record Rights of Way on maps which were to be periodically updated (later legislation required the maps to be kept under continuous review). This legislation resulted in a number of key documents that can assist with tracing the history of Rights of Way.

##### Parish Map (1952)

Parish maps were prepared by Parish Councils for County Councils when the first Definitive Map was being prepared; the map was produced to inform the County Council of the rights of way in each parish in order for the Draft Definitive Map to be produced. Route 2 is depicted on the Ordnance Survey basemap as a route labelled 'Northfield Drove', but it has not been included in the annotations of routes the parish council wished to claim as public rights of way. Perhaps due to the scale of the map, Routes 1 and 3 are not shown on the basemap and they have not been marked by the parish council. The map is signed by the chairman of the parish council and dated 3 March 1952.

This document indicates that none of the claimed routes were considered public rights of way by Penton Mewsey Parish Council at this time.

##### Objections Book

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<sup>14</sup> Hampshire Record Office Reference number – H/SY3/3/24/2

The book of objections contains a record of all objections received when the draft definitive map was open to public scrutiny. It also contains records of objections and amendments made when the Definitive Map was open to periodic review. There is no mention in the objections book of the omission of the claimed route from the Definitive Map.

#### Definitive Map (1957) (A)<sup>15</sup>

On the first Definitive Map, the claimed route is not shown. This is consistent with the footpath never having been recognised as a public right of way.

#### Other sources viewed

##### 37. Parish File

The County Council maintains a file relating to countryside matters (including countryside management and rights of way) for each of the parishes in the county. These files date back to around the 1940s-50s and contain, amongst other things, correspondence, maps, and work orders. Correspondence within the file dating from the 1950s and 1960s suggests that there was very little local interest in public rights of way. Letters from the County Council to the Parish Council went unanswered and a letter from the Parish Council in 1960 expresses 'regret' that no response was provided to previous letters:

*"My council very much regret that your previous letter (...) received very little attention, but they were of the opinion that it would be a waste of time for your representative to attend just a council meeting as the interest in the village on this subject is NIL."*

This correspondence, whilst not pertaining to the claimed routes provides an insight into local interest in rights of way at this time. The letters may suggest that the process of compiling the parish map in 1952 and of scrutinising the first Definitive Map was not as comprehensive as it could have been.

Whilst not providing direct evidence either for or against the application, this correspondence may weaken the inferences that can be drawn from the omission of the route from the documents relating to the National Parks and Access to the Countryside Act as described above.

#### **Analysis of Documentary Evidence**

38. The documentary evidence indicates that parts of the claimed route have existed since 1759 when Route 2 was first depicted on Taylor's Map of Hampshire. A clearer depiction of Route 2 is also shown on the Ordnance Survey Old Series map (c.1817).

39. The Penton Mewsey tithe records (1837) depict the route in its entirety – Route 2 is shown as a cul-de-sac track which is depicted in the same style as nearby roads and it is omitted from the apportionment, indicating that it was probably considered to be a public road at this time. Routes 1 and 3 are depicted by a

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<sup>15</sup> Hampshire Record Office Reference numbers – H/CL1/2/2

single pecked line. Whilst the map does not include a legend, standard tithe map conventions suggest that this is the way that footpaths were represented.

40. The depiction of the route on the tithe records also matches the route shown on the first, second and third editions of the Ordnance Survey County Series maps (1873-1910), and Route 2 is here labelled 'Northfield Drove'. By the fourth edition (1946), the land in this area has undergone an apparent change; there is some indication of part of Route 1, but Routes 2 and 3 are no longer shown and Northfield Drove seems to have been incorporated into neighbouring fields.
41. The route is also shown, either in its entirety or in part, on two separate sets of sales particulars dating from 1897. These are of interest because, as the applicant suggests, rights of way would have been likely to have a detrimental impact on land value and therefore would not have been added to any plans if they did not, in fact, exist at that time. These documents therefore provide some support to the application.
42. Official highway documents from the late 19<sup>th</sup> and early 20<sup>th</sup> centuries (specifically, the Andover Highway book, the Handover Map, and the Maintenance Map) do not include the route. This may suggest that the route was not considered to be publicly maintainable by Andover Rural District Council. However, unusually the plans do not depict minor ways, which may also explain the omission. The omission of the claimed route from these documents is not necessarily decisive.
43. The claimed route was not claimed by the parish council at the time the first definitive map was produced. However, correspondence dating from this time suggests that there was a lack of interest within the parish council relating to rights of way.
44. No record of a diversion, extinguishment or stopping up Order has been discovered. A solicitor acting for one of the landowners' agents suggested that a record from the Quarter Sessions of 1857 may be relevant, but upon examination it appeared to refer to a separate route; this was apparent when the field names were cross-referenced with the field names in the tithe apportionment.
45. In summary, the collective strength of the evidence appears to show that the claimed route is reasonably alleged to subsist and was likely considered a public right of way at the time the tithe map was produced. Since then, the route has fallen into disuse, and it does not appear to have been considered as a right of way by the Rural District Council in the early 20<sup>th</sup> century. Despite this, no Orders to stop up, divert or extinguish the route have been found.
46. Whilst the documentary evidence appears to show that Route 2 was previously a public road and therefore may give rise to higher rights than a public footpath, judgements from case law (*Attorney General v Antrobus, 1905*; *Moser v Ambleside Urban District Council, 1925*; *Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs and Another, 2012*) illustrate that a public right of way cannot be a cul-de-sac unless it leads to a place of 'popular resort', and that a right of way must otherwise connect to another public highway. For these reasons, higher rights than a public footpath cannot be considered along Route 2, as there is no evidence for an onward bridleway or byway beyond Point

B, and Point B in itself is not a destination (such as a well-known viewpoint or a beach).

## **Conclusions**

47. As set out earlier in the report, for a change to the Definitive Map to be made, it must be on the basis of evidence which shows that the existence of a public right of way is 'reasonably alleged'. Documentary evidence clearly demonstrates that part of the claimed route has existed since 1759. The tithe documents provide the most compelling evidence and indicate that the route appears to have been considered a public right of way in 1837 when the documents were produced. The route is also clearly shown on three editions of the Ordnance Survey County Series maps, although only a part of the route is shown on the fourth edition, which may suggest that the route was not in regular use at this time. Other contemporaneous documents, including the highway handover and maintenance maps, and documents relating to the production of the first Definitive Map, appear to suggest that the route was not considered to be a public right of way at this time.
48. No Orders relating to an historic diversion, extinguishment or stopping up of this route have been discovered and it therefore appears that there is a reasonable allegation that a public right of way subsists along the alignment of the claimed route.
49. Route 3 is currently being diverted by Test Valley Borough Council (no objections to their Order have been received, and confirmation will follow in due course). The recommendation is therefore that the application be partially accepted (to exclude Route 3) and a public right of way should be recorded along Routes 1 and 2.
50. The status of the route in question should be a public footpath. As detailed at paragraph 46, higher rights may subsist along Route 2, but it is not possible to record these, as a right of way generally cannot be a cul-de-sac, and there is no onward route beyond Point B.
51. The width of the route should be 1.5 metres wide between Points A and C, and a variable width of between 5 and 8.3 metres between Points B-E-F; these are the apparent widths depicted on the third edition of the Ordnance Survey County Series map. There is no evidence that the route should be subject to any limitations such as gates.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes/no
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes/no
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes/no
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes/no
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.</b>	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

Location

Claim Reference: Case File (DMMO 1198)

Countryside Access Team  
Castle Avenue  
Winchester  
SO23 8UL

## **EQUALITIES IMPACT ASSESSMENT:**

### **1. Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **2. Equalities Impact Assessment:**

Hampshire County Council, in its capacity as 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981. It is not considered that there are any aspects of the County Council's duty under the Equality Act which will impact upon the determination of this Definitive Map Modification Order application.

## Appendix 1 - Evaluation of Historical Documents

Under Section 32 of the Highways Act 1980, any court or tribunal determining the existence of public highway rights is required to take all evidence tendered into consideration before determining whether a way has or has not been dedicated as a highway, giving such weight to each document as it considers is *“justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.”*

The Planning Inspectorate’s Definitive Map Orders Consistency Guidelines have the following to say on the analysis of evidence:

*“There is a distinct and important difference between the ‘cumulative’ and ‘synergistic’ approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers, all produced within the same decade or so) could be regarded as mere repetition. Thus, their cumulative evidential weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind. “*

### Early Commercial Maps

A number of map-makers (such as Isaac Taylor, Thomas Milne and C & J Greenwood) were producing small-scale maps (often one inch to the mile or less) during the 17th – 19th centuries. These were often sponsored by local landowners, and purchased as works of art rather than aids to navigation. The quality of surveying varied, and prior to 1800 was generally poor compared with similar scale Ordnance Survey maps produced from 1808 onwards. Although in isolation they do not prove the status of the roads and tracks shown on them, when considered alongside other evidence they can be helpful in identifying the status, location, and early origin of a route.

### Tithe Maps and Awards

The Tithe Commutation Act 1836 completed a process that had been going on piecemeal for some years, and required the payment of tithe (i.e. local taxes payable (usually) to the church or its representative) to be converted from a percentage of the produce of land, to a money payment, in order to calculate and record the titheable value of land detailed maps were drawn up for each parish. These are valuable pictures of land use and ownership at the relevant time (usually between 1838 and 1845). The way in which roads and tracks are recorded on the map and in the award can be helpful in determining their status (public roads, were often untitheable, because they did not have a value for agriculture and might be recorded in the ‘Roads and Waste’ section of the award). These maps have a high evidential value, because they were part of a statutory process which was open to public scrutiny. However, they were not prepared with a view to recording the existence or status of public highways and, in the past, their significance for rights

of way has been overstated. It is impossible to apply a general set of interpretative rules for all tithe maps: different maps treat public highways in different ways and each must be studied and evaluated individually if any reliable conclusion is to be drawn from them.

### **Quarter Sessions and Petty Sessions Records**

The Court of Quarter Sessions, and Magistrates (acting either independently or in Petty Sessions) used to carry out many administrative functions, including the maintenance and protection of highways. Minutes of proceedings, or papers lodged with either Sessions (although in Hampshire far fewer records survive for the business of the Petty Sessions or Magistrates than for the higher court) can provide strong evidence of the existence and status of highways. Stopping up and diversion orders made by the Quarter Sessions have the legal effect stated in the order in the same way as orders made by the County Council and Magistrates now do.

### **Ordnance Survey Maps and Records**

The first maps of Hampshire produced by the Ordnance Survey and commercially available date from the early 19<sup>th</sup> century and were a great improvement on contemporary maps of a similar genre. The most useful series of maps are the 1:2,500 County Series maps, produced at intervals between the late 1860s and the 1940s. These maps provide an accurate picture of the landscape at the date of survey, and carry strong evidential weight, but it should always be borne in mind that the surveyors mapped physical features and not legal rights. These maps cannot be taken in isolation as evidence of the legal status of the paths and tracks shown on them.

Additional help in determining the status of a path can be found in other Ordnance Survey Records: the first edition County Series Map was accompanied by a Book of Reference, which identified 'Roads' (and sometimes even 'Public Roads' or 'Occupation Roads'); the object name books (some have survived for the third edition, circa 1909) relied on local knowledge (for example, the Overseer of Highways) to describe features, including public roads; boundary books can record public highways where they also form parish boundaries and levelling records may also refer to roads and other features.

### **Maintenance Maps (the 1929 'Handover' Map & 1946 Maintenance Map)**

Handover Maps were prepared by the Surveyor of each district within Hampshire when responsibility for the maintenance of rural, unclassified roads was transferred to the County Council (as prescribed in the Local Government Act of 1929). The maps must be given some weight because they are good evidence of what the highway surveyor considered to be publicly maintainable. Having said that, it is not known how rigorous were the inquiries that resulted in the colouring that appears on the maps, and it should also be borne in mind that they were internal documents that were not subject to public scrutiny. Further, the maps were a record of maintenance responsibility, not public rights – a route left uncoloured on the Handover Map may nevertheless have been in public use.

The Maintenance Maps were produced as internal working documents to provide an updated picture of local highway network maintenance responsibilities after the

Second World War. They add weight to a body of evidence where they are consistent with it, but great care needs to be taken before attributing too much importance to them where they contradict earlier evidence of the use and status of a path.

**Private conveyancing documents and sales particulars**

These might provide useful supporting evidence when considered alongside other documents, but generally carry fairly low evidential weight.

Application for a Definitive Map Modification Order to record two public  
footpaths between Penton Mewsey Footpath 4 and Bridleway 8  
Parish of Penton Mewsey

## APPENDIX 2 – Documentary Evidence

Taylor's Map of Hampshire (1759) (A<sup>1</sup>)



<sup>1</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshiremapped.org.uk/hantsmap/taylor4/TY35.htm>

Ordnance Survey Old Series (c.1817) (A)<sup>2</sup>



Turnpike or main roads



Other roads



Unfenced roads

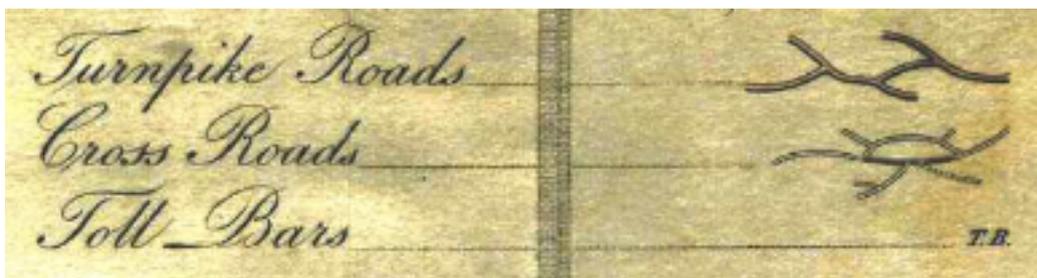


Extract from the legend to the Old Series compiled by Dr Richard Oliver (University of Exeter) and published on the Cassini website<sup>3</sup>. © Cassini Publishing Ltd & Richard Oliver.

<sup>2</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshiremapped.org.uk/hantsmap/ordnce6/oss25f.htm>

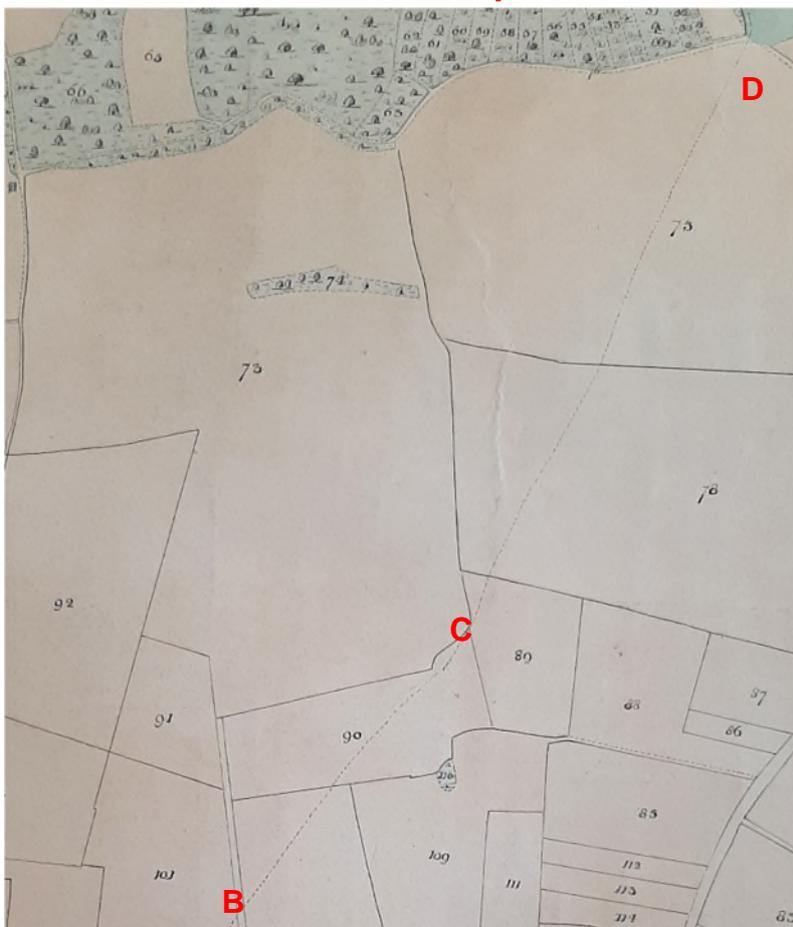
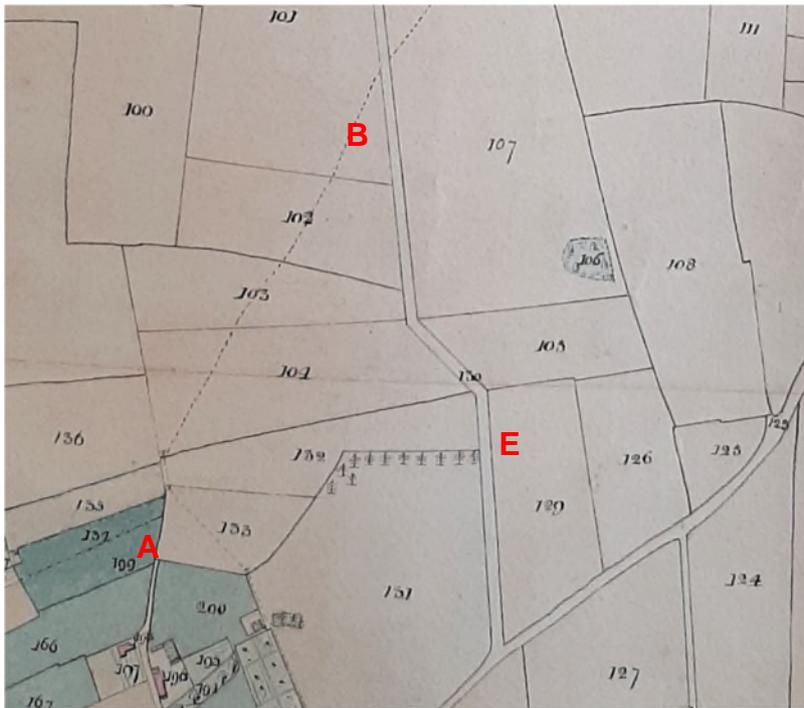
<sup>3</sup> <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Greenwood's Map of Hampshire (1826) (A)<sup>4</sup>



<sup>4</sup> Available from Old Hampshire Mapped. Reproduced with permission. Acknowledgement – Jean and Martin Norgate <http://www.oldhampshiremapped.org.uk/hantsmap/grnwood2/grw45f.htm>

Penton Mewsey Tithe Records (1837) (A)<sup>5</sup>



<sup>5</sup> Hampshire Record Office Reference numbers – 21M65/F7/186/2 and 21M65/F7/186/1  
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Extract from the tithe apportionment of the parcels which the claimed route crosses:

<b>Number</b>	<b>Landowner</b>	<b>Occupier</b>	<b>Name and description of land</b>	<b>State of cultivation</b>
102	Anna Bright Copyhold under Rt. Hon Pierrepont	Clarke Thomas	North Field	Arable
103	Charles Thompson Copyhold under Rt. Hon Pierrepont	Thomas Thurstain	North Field	Arable
104	-	Thomas Baker	North Field	Arable
107	Rev. Christopher Dodson	Susannah Batt	North Field	Arable
90	Fosbury Copyhold under Rt. Hon Pierrepont	Susannah Batt	North Field	Arable
89	Rev. Christopher Dodson	Susannah Batt	Parsonage Down	Arable
78	Rt. Hon. Henry Pierrepont	Susannah Batt	Cully Wood Down	Arable
75	Rt. Hon. Henry Pierrepont	Susannah Batt	Coppice Ground	Arable

Parcel 130 (Route 2) is absent from the apportionment, which includes a section for 'roads and waste' at the end.

## Quarter Sessions Records (1857) (A)<sup>6</sup>

*Transcript provided by one of the landowner's representatives. Original document reviewed by investigating officer. For ease of reference, land parcel names have been highlighted.*

At this session a Certificate bearing date the thirtieth day of May One thousand eight hundred and fifty seven under the hands of Sir John Walter Pollen Bartnet and the Reverend Charles Randolph Clerk two of Her Majestys Justices of the Peace acting in and for the said County setting forth the William Cubitt did in pursuance of An Act of Parliament made and passed in the sixth year of the Reign of His late Majesty King William the fourth intituled An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England by a certain Notice in writing under his hand dated the seventeenth day of April One thousand eight hundred and fifty seven require the Surveyor of the Highways of the Parish of Penton Mewsey in the said County of Southampton to give Notice to the Churchwardens of the said Parish of Penton Mewsey to assemble the Inhabitants of the same Parish of Penton Mewsey in Vestry and to submit to them his the said William Cubitt wish for stopping up diverting and turning part of a certain Public Highway and a certain Public Footway situate in the said parish of Penton Mewsey that is to say Stopping up a certain part of a Public Highway leading from the Village of Penton Mewsey aforesaid to the Hamlet or Village of Hatherden in the Parish of Andover in the said County And diverting or turning the said Highway into and over and substituting in lieu of the same in a new line of Highway commencing at or near the South West Corner of a certain field called **Jennings Meadow** the Property of the Honorable Philip Pierrepont and extending hence in an Easterly direction through and across the last mentioned field through and across a certain field called **Jennings** the property of the said William Cubitt and through and across a certain field called **Home Field** also the property of the said William Cubitt into the said Highway leading from Penton Mewsey to Hatherden aforesaid which said proposed new Highway contains in length Two hundred and twenty two yards or thereabouts And stopping up a certain part of a Public Footway leading from Penton Mewsey aforesaid to Foxcott in the said County. And diverting the said Footway into and over and substituting in lieu of the same a proposed new line of Footway commencing at or near the North Corner of a certain field called **Path Acre** the property of the said Honourable Philip Pierrepont and extending thence in a South easterly direction through the said last mentioned field and through and across the said field called **Home Field** across the said Highway leading from Penton Mewsey to Hatherden across a certain field called **Path piece** the property of the said William Cubitt and across a certain field called **Smiths Thorn** also the property of the said William Cubitt to the South east corner of the said last mentioned field which proposed new line of Footway contains in length Four hundred and twenty yards of thereabouts. And it also appearing by the said Certificate that the said Surveyor sis by Notice in writing require the Churchwardens to assemble the Inhabitants of the said parish of Penton Mewsey in the Vestry and that the Inhabitants int Vestry assembled did agree to the said wish and proposal and did deem it expedient to stop up divert and turn the said parts respectively of the said Public Highway and Footway therein and hereinbefore mentioned and that the Chairman of the

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<sup>6</sup> Hampshire Record Office Reference number – Q1/44

said Vestry did order and direct the Surveyors of Highways of the said parish to apply to two of Her Majesty's Justices of the Peace for the said County to view the aforesaid Highway and Footway so deemed expedient to be stopped up diverted and turned and also the said proposed new Highway and footway respectively And it also appearing by the said Certificate that the said Surveyors did afterwards make application to them the said Justices to view the said Public Highway and footway respectively so deemed expedient to be stopped up diverted and turned And that they the said Justices did on the twenty ninth day of April last past on such application and request view the same accordingly And it also appearing by the said Certificate that the said William Cubitt and The Honorable Philip Pierrepont the owners of the said Lands and Grounds through which the new Public Highway and Footway respectively are proposed to be diverted and turned as aforesaid had by writing under their hands respectively consented thereto And it also appearing by the said Certificate that the several Notices required by the said Act had been duly given and published and that proof of the same had been given to the satisfaction of them the said Justices And that a plan had been delivered to them at the same time particularly describing the old and proposed New Public Highway and Footway respectively by meters bounds and admeasurements thereof which plan had also been verified before them by a competent Surveyor and was thereunto annexed And it also appearing by the said Certificate and they the said Justices did thereby certify that they did on the twenty ninth day of April last past together and at the same time view the said Public Highway and Footway so proposed to be stopped up and turned and therein and hereinbefore particularly escribed and also the said proposed new highway and footway respectively and which said Old highway and footway and New highway and footway are respectively described and delineated on the said plan hereunto annexed and that they did upon such view find that the part of the said Old highway proposed to be stopped up that is to say a certain part of a Public Highway leading from the Village of Penton Mewsey aforesaid to the Hamlet or Village of Hatherden aforesaid commencing from the South West Corner of the said field called **Jennings Meadow** and extending thence in an easterly direction to or over the South end of the said field called **Home Field** containing in length Two hundred and eighteen yards or thereabouts and lying between the letters A and B on the said plan might be stopped up And that the said part of the said last mentioned highway might be diverted and turned as follows that is to say by diverting the same into and forming a New highway commencing at or near the South West Corner of the said field called **Jennings Meadow** and extending thence in an easterly direction through the said last mentioned field through the said field called **Jennings** and through the said field called **Home field** into the said Highway leading from Penton Mewsey to Hatherden which said proposed new line of Highway contains in length Two hundred and two yards or thereabouts and lies between the letters C and D on the said Plan And they the said Justices did further certify that the said Old Highway would be rendered wholly unnecessary by reason of he said proposed New Highway and that the said proposed New Highway would be more commodious convenient and useful to the Public generally than the said Old Highway and particularly that the distance hereby between the neighbouring Villages of Penton Mewsey and Hatherden would be lessened sixteen yards or thereabouts And they the said Justice did further certify that the said part of the said Old Public Footway proposed to be stopped up that is to say a certain part of the Public Footway leading from

Penton Mewsey to Foxcotte aforesaid commencing from the North Corner of the said field called **Path Acre** and extending thence in a South Easterly direction to the South East Corner of the said Field called **Smith Thorn** containing in length Four hundred and eighty four yards or thereabouts and lying between the letters E and F on the said Plan might be stopped up. And that the said part of the said last mentioned footway might be diverted and turned as follows (that is to say) by diverting and turning the same into and over and forming a New footway commencing at or near the North Corner of the said field called **Path Acre** and extending thence in a South Easterly direction through and across the said last mentioned field and through and across the said field called **Home Field** across the said Highway leading from Penton Mewsey to Hatherden through the said field called **Path Piece** and through the said Field called **Smiths Thorn** to the South East Corner of the said last mentioned field which said proposed New line of Footway contains in length Four hundred and twenty nine yards or thereabouts and lies between the letters G and H on the said Plan And they the said Justice did further certify that the said Old Footway would be rendered wholly unnecessary reason of the proposed New Footway and that the said proposed New footway would be more commodious convenient and useful to the Public generally than the said Old footway and particularly that the distance thereby between the neighbouring Villages of Penton Mewsey and Foxcotte would be lessened fifty five yards or thereabouts And it also appearing unto this Court that the said recited Certificate and other proceedings had been duly lodged with the Clerk of the Peace of the said County and by him read in the open Court and enrolled amongst the Records of this Court in pursuance of the Statute in that Case made and provided. This Court doth order that the said Public Highway and Footway respectively mentioned and described in the said Certificate proof plan and consents be respectively stopped up diverted and turned accordingly on the Motion of Mr Poulden.

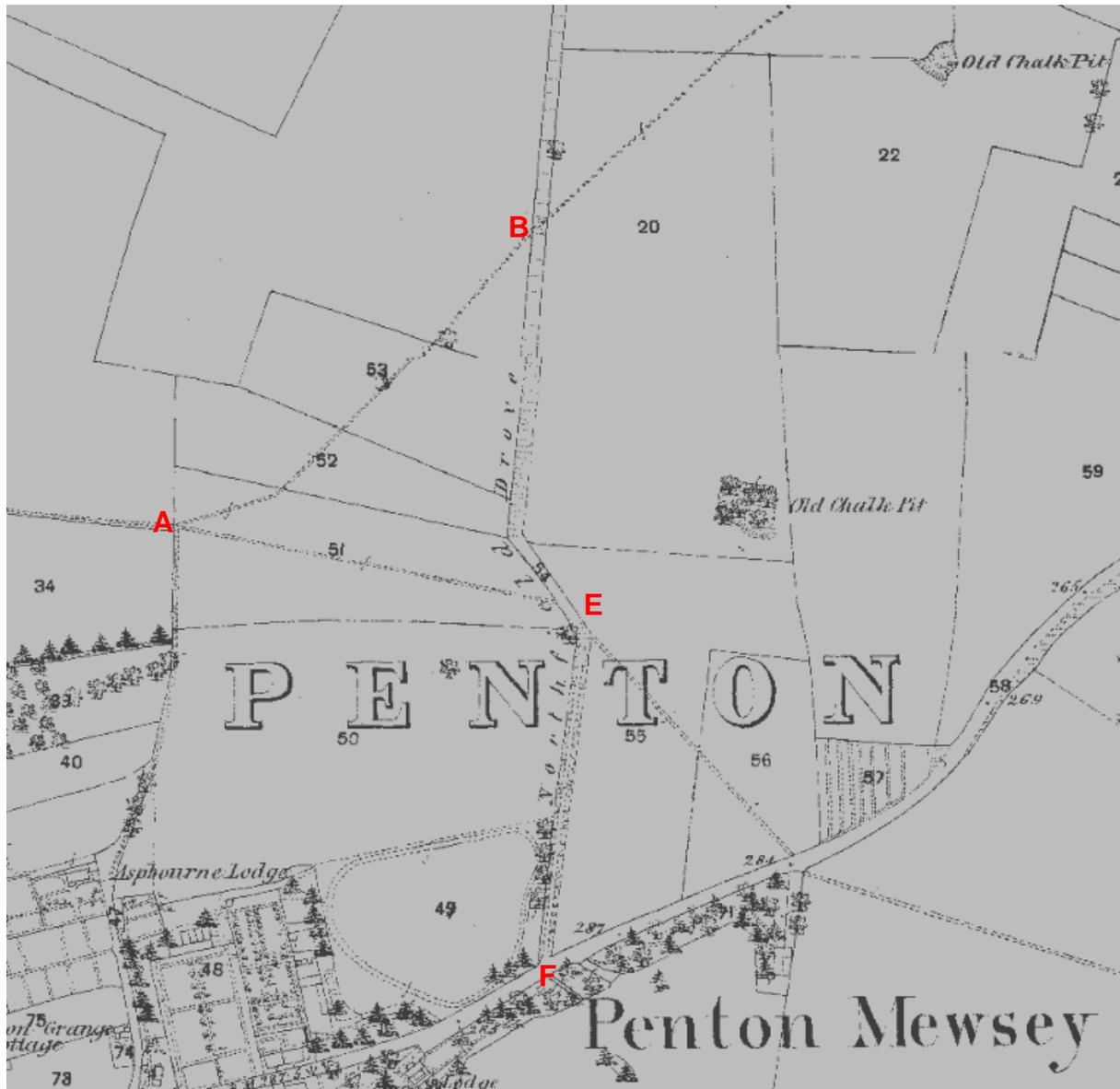
Ordnance Survey Maps - County Series (25 inches to 1 mile) – 1873 – 1946

*Available from the National Library for Scotland. Copies also held by Hampshire Record Office. These photographs are taken from the Hampshire County Council Geographical Information System (GIS)*

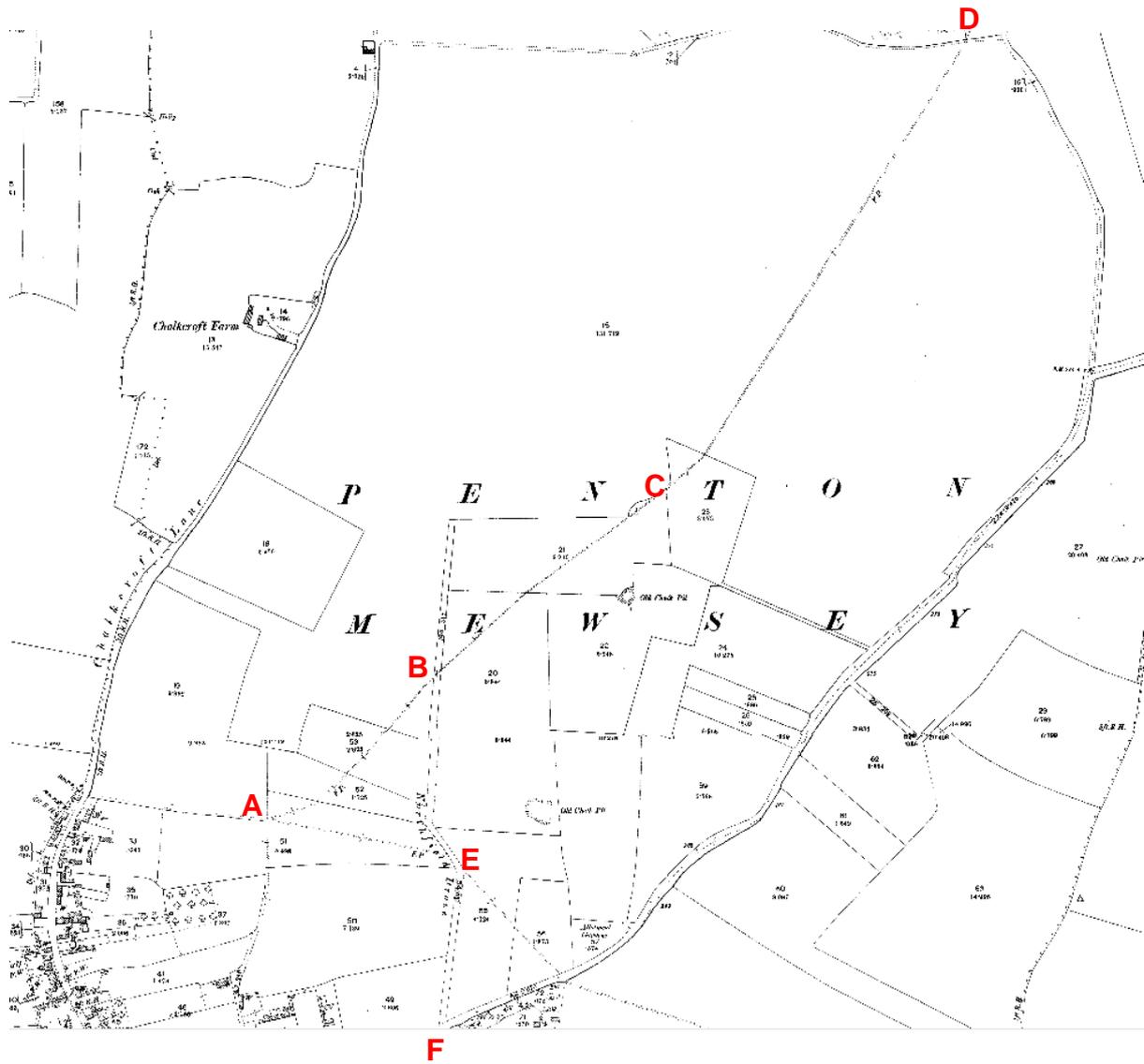
Ordnance Survey Maps - County Series (25 inches to 1 mile) – First Edition, 1873



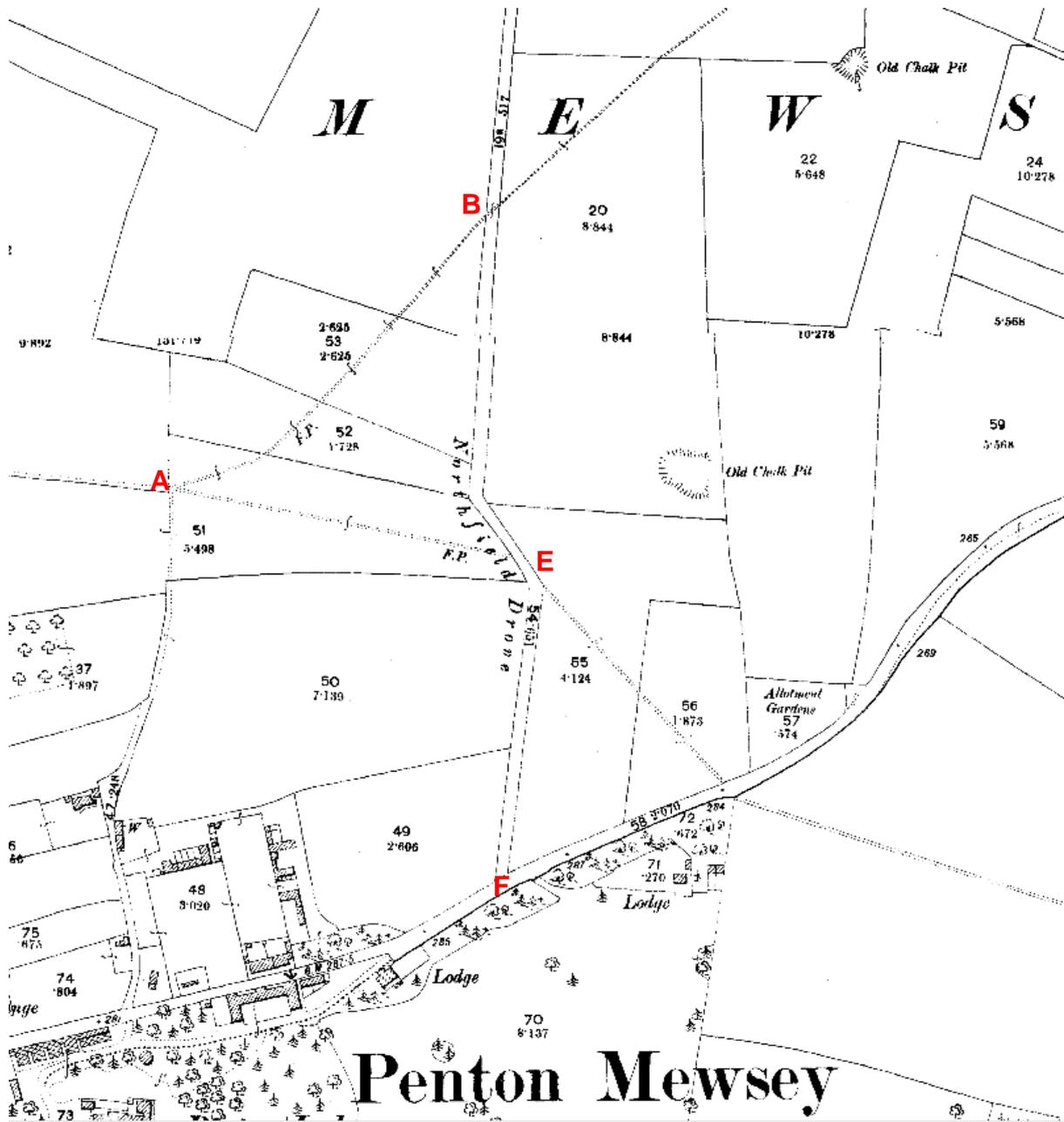
Ordnance Survey Maps - County Series (25 inches to 1 mile) – First Edition, 1873



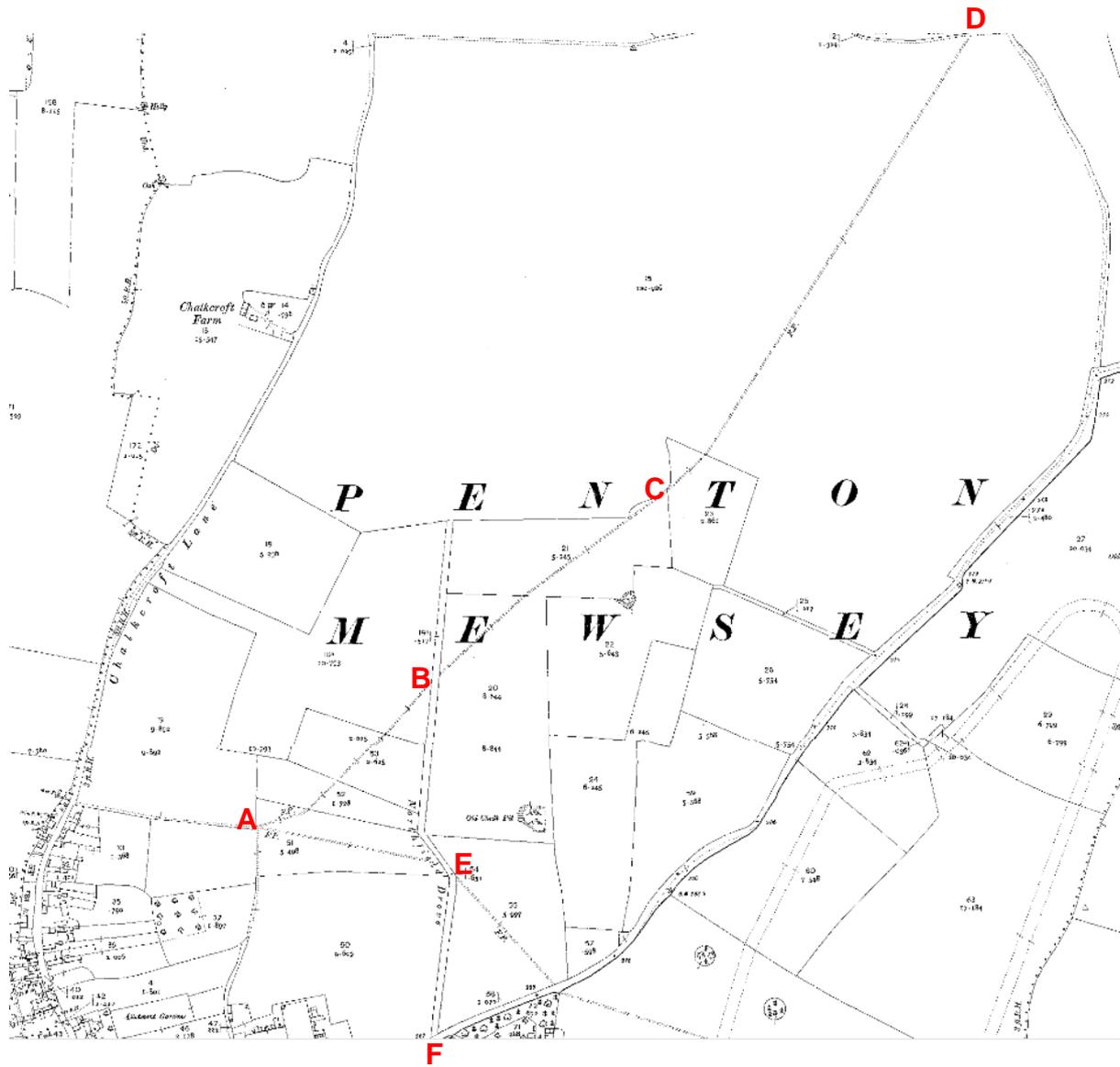
Ordnance Survey Maps - County Series (25 inches to 1 mile) – Second Edition, 1896



Ordnance Survey Maps - County Series (25 inches to 1 mile) – Second Edition, 1896

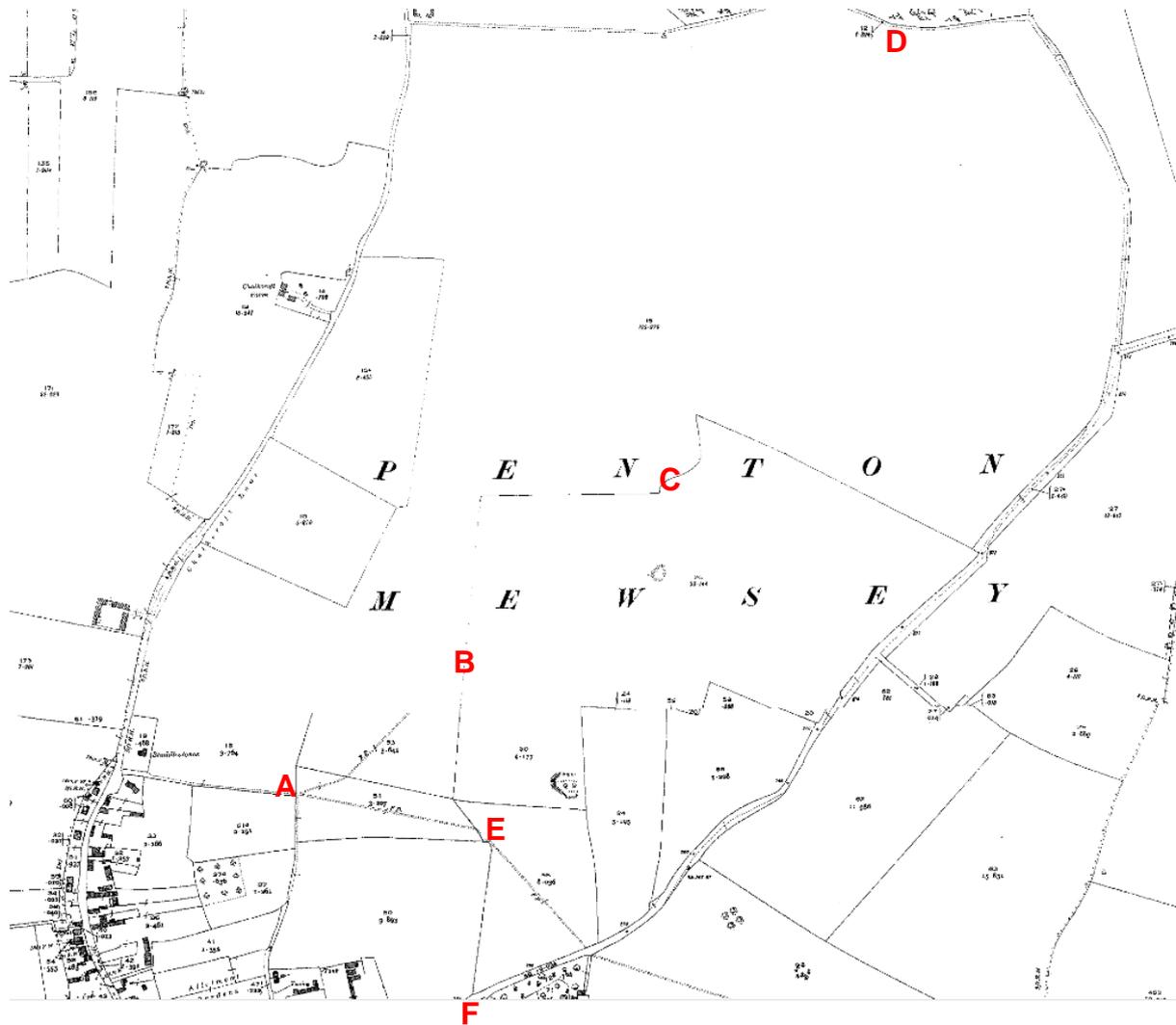


Ordnance Survey Maps - County Series (25 inches to 1 mile) – Third Edition, 1910

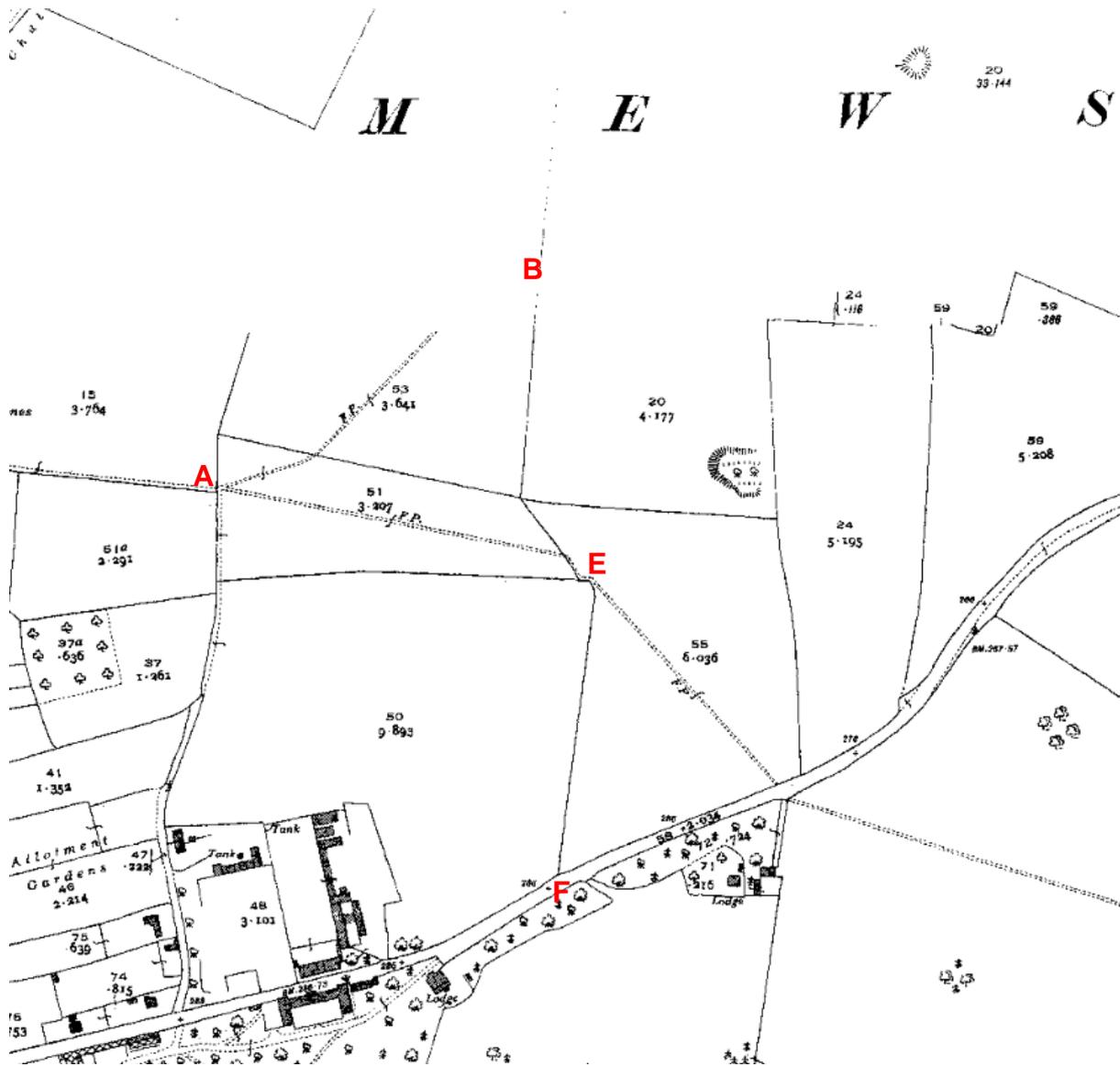




Ordnance Survey Maps - County Series (25 inches to 1 mile) – Fourth Edition, 1946

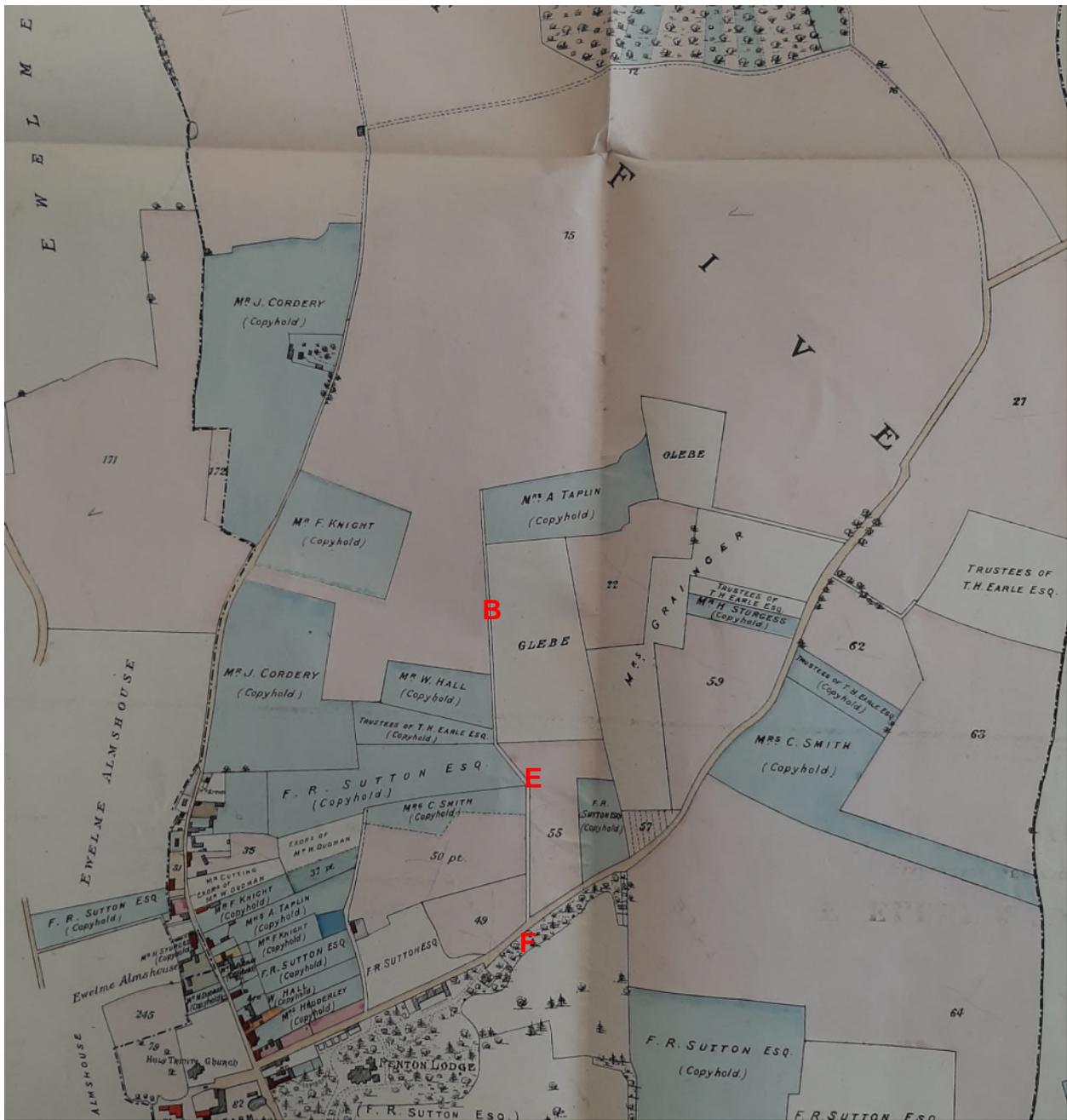


Ordnance Survey Maps - County Series (25 inches to 1 mile) – Fourth Edition, 1946



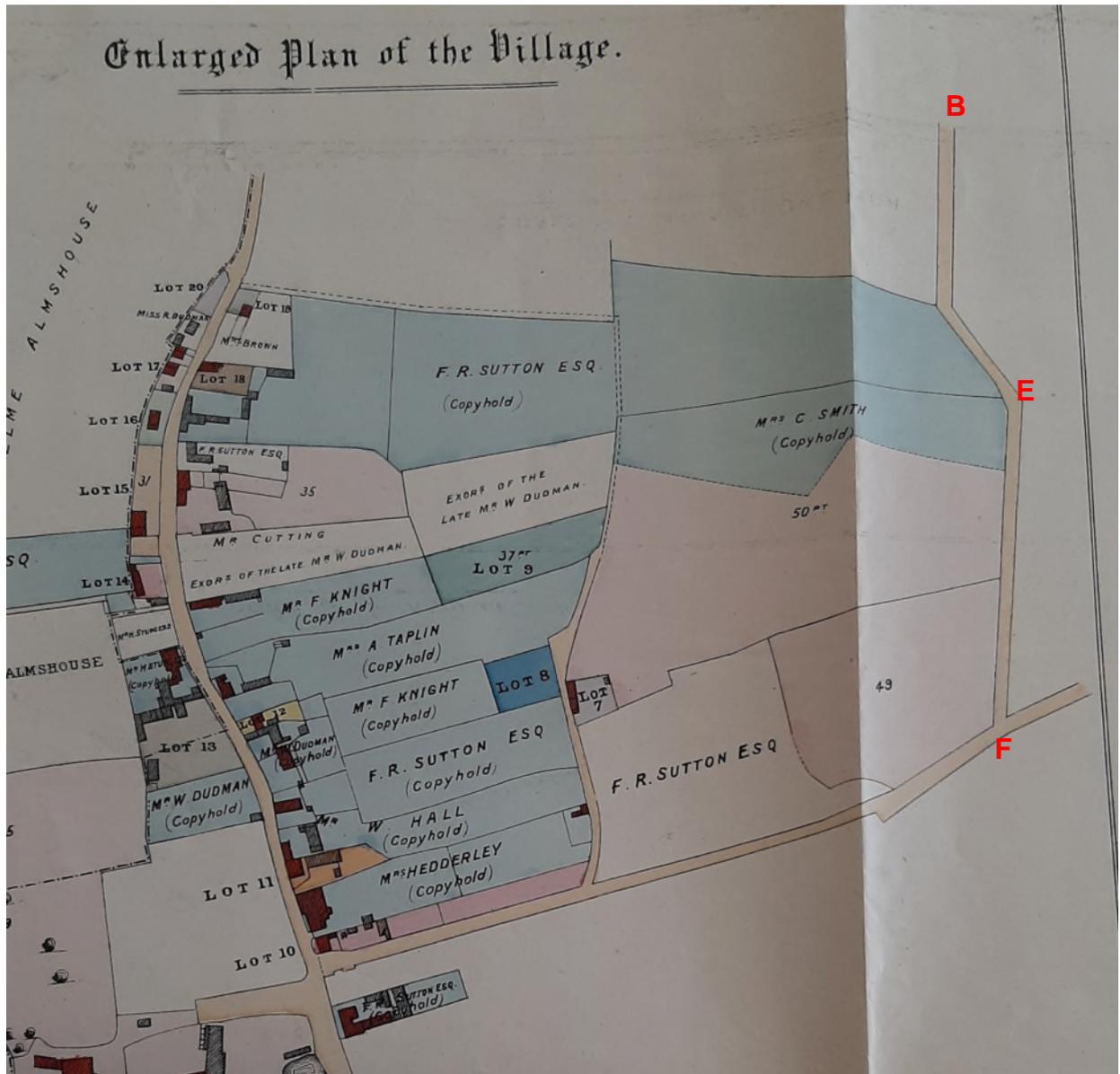
Sales particulars of Conholt Park and Penton Manor Estate (1897) (A)<sup>7</sup>

Main plan:

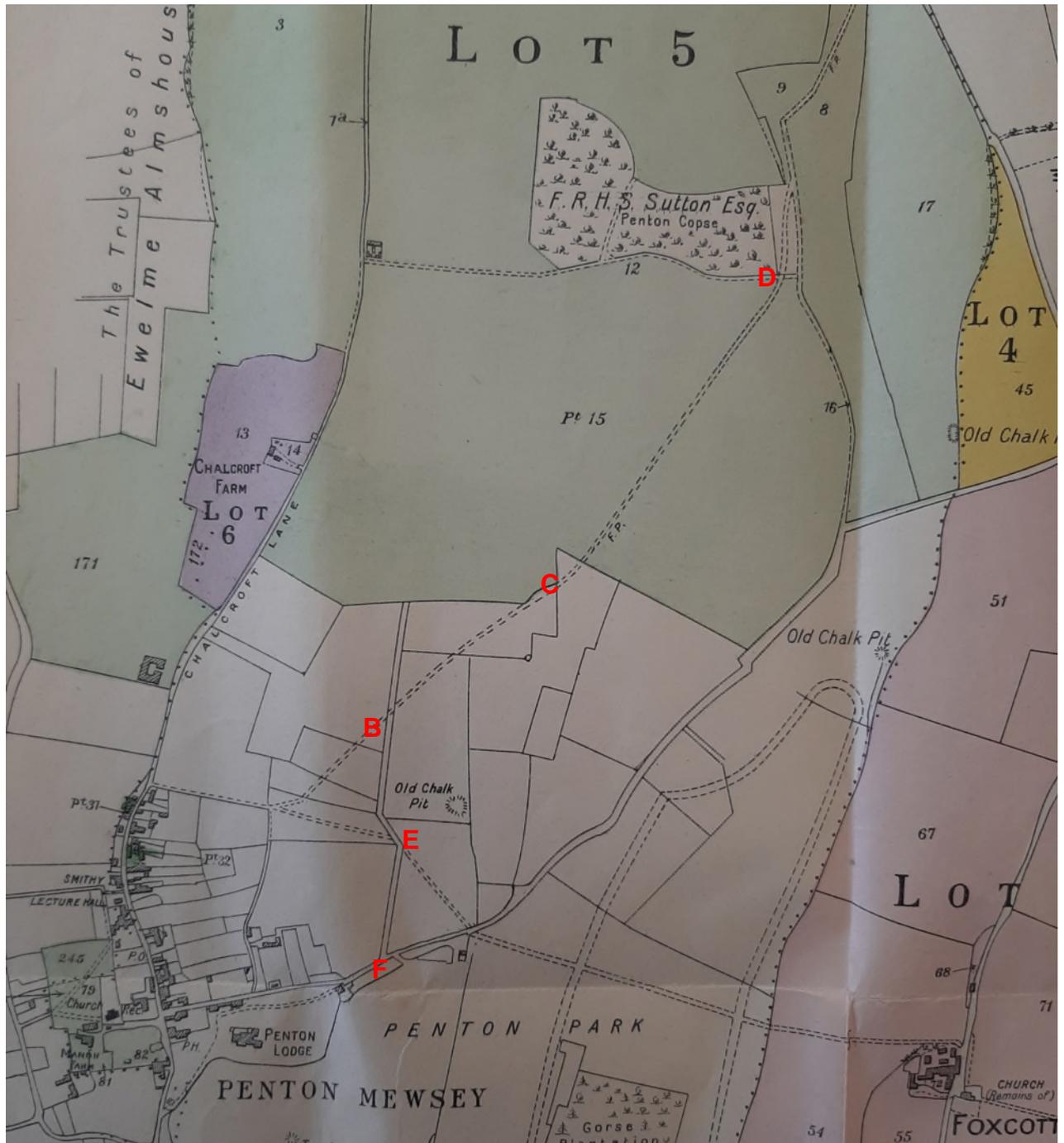


<sup>7</sup> Hampshire Record Office Reference number – 46M84/F75/2  
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Inset plan:

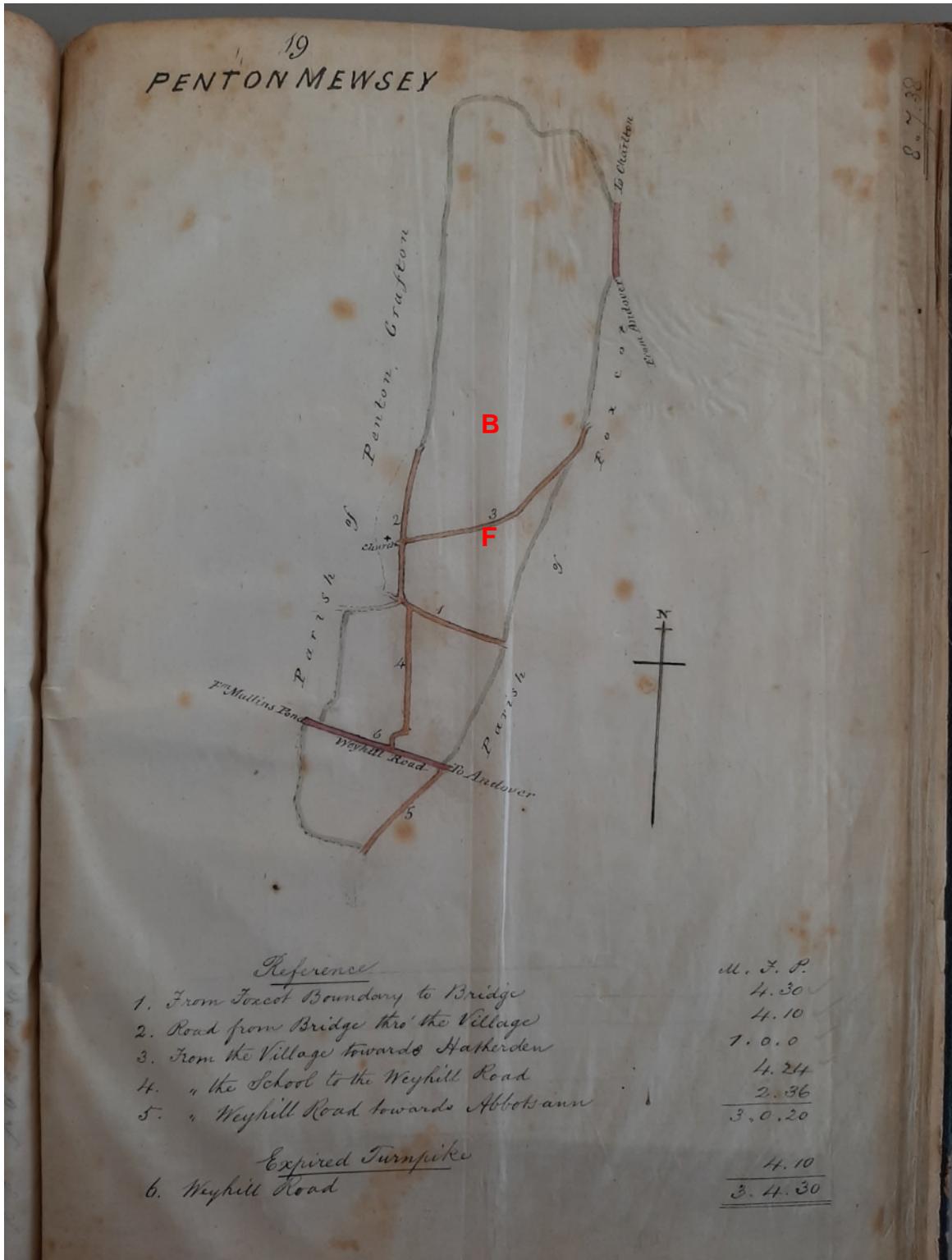


Sales particulars of Foxcotte, Penton Manor and Chalcroft Farms, Penton Mewsey and Charlton (1897) (A)<sup>8</sup>



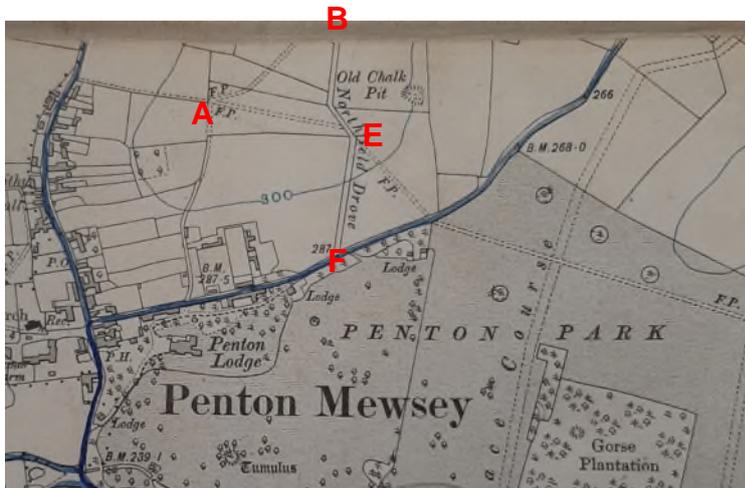
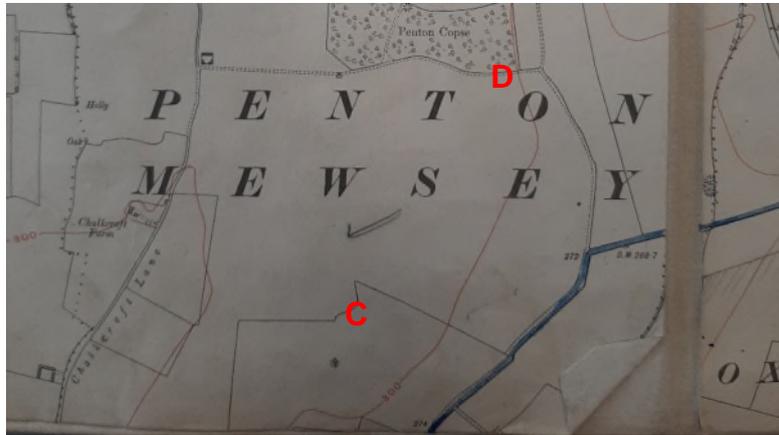
<sup>8</sup> Hampshire Record Office Reference number – 46M84/F75/4  
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Book containing schedules and plans, by parish, of roads in Andover Highway District (mid-late 19<sup>th</sup> century) (A)<sup>9</sup>



<sup>9</sup> Hampshire Record Office Reference number – 17M73/DH4  
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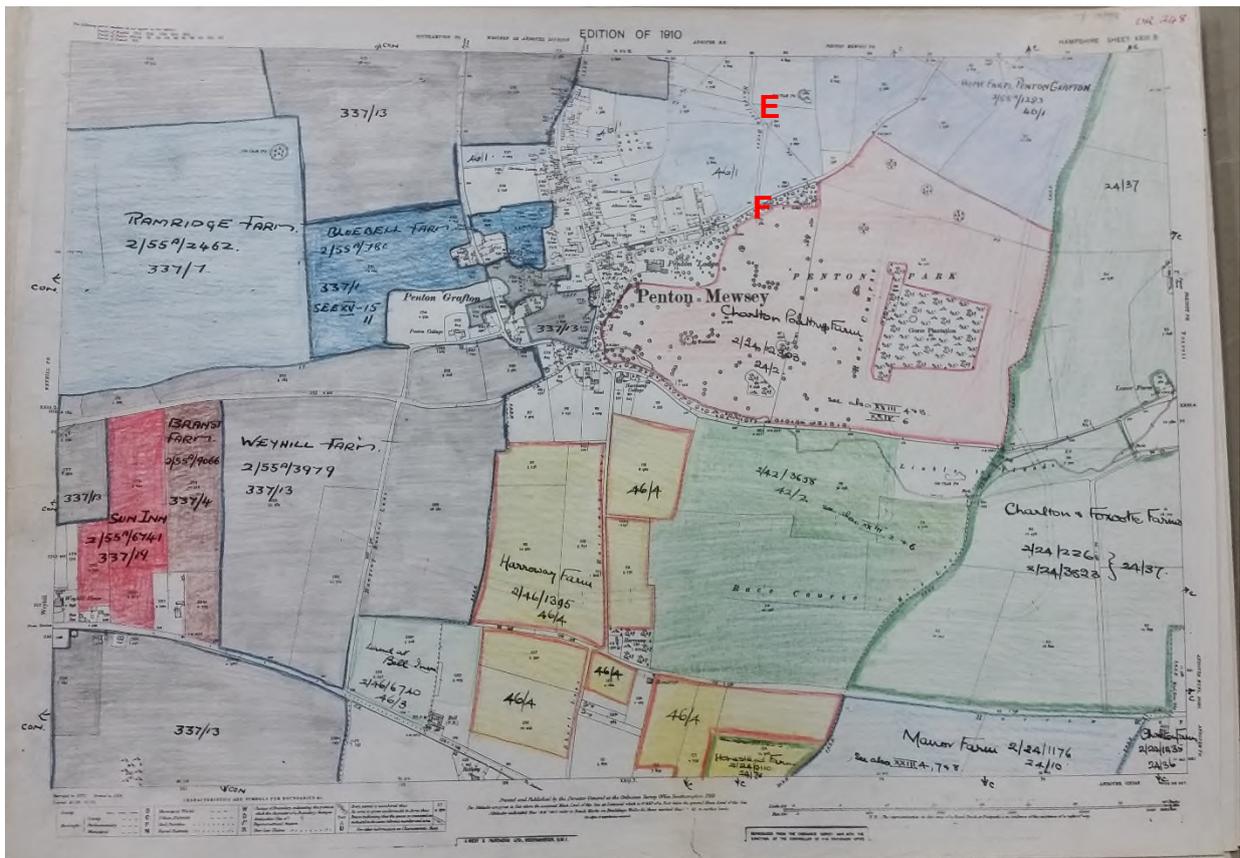
Andover Rural District Council Highway Handover Map (1929) (A)<sup>10</sup>



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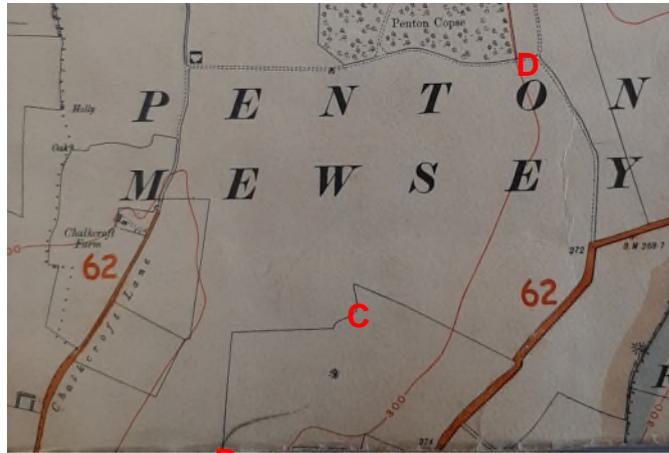
<sup>10</sup> Hampshire Record Office Reference number – H/SY3/6/3  
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Ministry of Food National Farm Survey (1946) (A)<sup>11</sup>



<sup>11</sup> Available from the National Archives. Reference number – MAF 73/15/23. Images provided by the applicant

Highways Maintenance Map, Andover Division (1946) (A)<sup>12</sup>

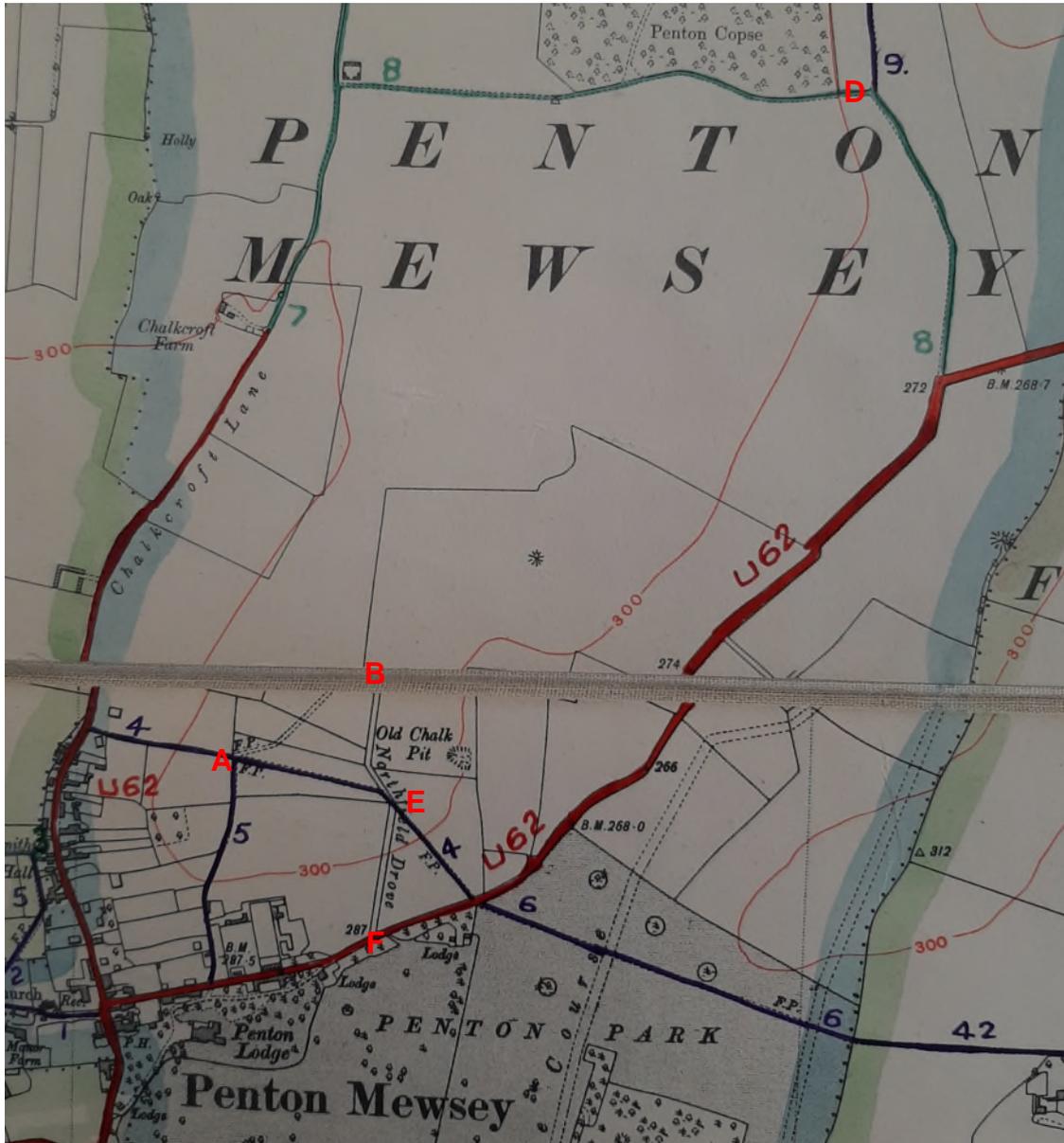


<sup>12</sup> Hampshire Record Office Reference number – H/SY3/3/24/2  
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Parish Map (c.1950)



Definitive Map (1957) (A)<sup>13</sup>



<sup>13</sup> Hampshire Record Office Reference numbers – H/CL1/2/2  
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