

Transportation Advisory Group



Report subject	James Road to Sheringham Road, record unprotected footpath (currently blocked) as a Public Right of Way (PRoW)
Meeting date	26 February 2020
Status	Public Report
Executive summary	To obtain permission to permit an Order to protect the currently obstructed path from James Road to Sheringham Road as a Public Footpath.
Recommendations	The Transportation Advisory Group is asked to consider recommending to the Cabinet that it approves: Permission is granted to create an order to record the unprotected footpath as a Public Right of Way.
Reason for recommendations	It is a legal duty for all surveying authorities to make and maintain a Definitive Map and Statement for their area, to continually survey the area for possible Public Rights of Way, and to make Orders upon the discovery of evidence that a Public Right of Way has arisen from long use. Public Rights of Way can come into being for various legal reasons, however most commonly it is through statutory inference of dedication. In plain terms, if a path has been walked by the public uninterrupted for a period of 20 years, and the use has been without force, without deception and without having been granted a specific express permission from the landowner, then they acquire a right to pass and repass.
Portfolio Holder(s):	Andy Hadley - Portfolio Holder For Transport and Infrastructure
Corporate Director	Bill Cotton - Corporate Director for Regeneration and Economy
Service Director	Julian McLaughlin, Growth and Infrastructure
Contributors	Zak Cusens - Rights of Way Officer - Regeneration and Economy

Wards	Alderney and Bourne Valley
Classification	For Decision

Background:

1. BCP Council was informed via an application made by a member of the public that public rights have arisen through long use of the path between James Road and Sheringham Road.
2. The path appears on historic maps from 1931 onwards and is labelled on them as a footpath from 1941 onwards. In 2017 the path was fenced off by the occupier of 104 Sheringham Road.
3. A non-statutory pre-order consultation has been carried out and has had mixed response with ten people supporting the protection of the path and seven people claiming the path does not exist.

User evidence:

4. A summary of the years that members of the public have accessed the path can be seen in Appendix E. The period of user evidence extends between 1957 and 2018. Most user evidence is more recent, having taken place within the last fifteen years, however there remains more than one witness who claims to have used the path between 1960 and 1980, then from 1987 onwards.
5. Six of the witnesses claiming to have used the path state to have used the path until 2018, however the validity of this end date is unlikely due to the path having been fenced off since 2017 and having been overgrown for several years prior to this. It is unclear as to when the path would have become unpassable due to vegetation growth. There is also a young Oak tree growing in the path.
6. Whitelock Group, who own the properties at Nos. 49 and 51 Wroxham Road, claim to have accessed the stretch of the path that adjoins No. 49 on a regular basis from 2010 up to 2017 for the purpose of the maintenance of the property boundary. The Whitelock Group submission also highlights that in a 2006 planning application for the redevelopment of their properties, the footpath is referred to as follows: "The status of the footpath is not completely clear except that it has been in this position, and presumably therefore in use

as a right of way since the Ordnance Sheets of 1954. There are no rights reserved in the Deeds of the proposed site, of which the footpath clearly forms a part. However, this footpath is not disputed”.

7. There are seven users who submitted evidence claiming to have neither used the path nor seen anybody using the path at all.
8. During the 20th Century, 49 and 51 Wroxham Road served a retail purpose as corner shops, thereby acting as a draw for local pedestrian traffic from those living on James Road.

Legal submission from Mr. Michael Atherton, occupier of 104 Sheringham Road:

9. In his statement, Mr. Atherton outlines that he believes that use of the path has not been ‘as of right’. He alleges that only some landowners have a ‘right of way’ mentioned in their Title and that this would imply that the path has no Public Right of Way designation, however as no Public Right of Way has been recorded yet, this would not have appeared in any Title, so does not serve to undermine its status.
10. It is alleged that as the longest period of time that any of the properties has been owned is 14 years, that the statutory period is not fulfilled, however this argument has no relevance as no single user is required to fulfil the statutory period on their own and not all witnesses live adjoining the path in any case.
11. The statement goes on to claim that the evidence shows that the route has not been used by “any members of the public for very many years, if at all. There certainly is not any evidence which shows 20 years of uninterrupted use”. These claims are contradicted by the evidence submitted in the applicant’s submission which claim a continued pattern of public access beginning in 1957.
12. The forms submitted claiming a lack of knowledge of the existence of the path or lack of observation of use of the path would not appear to undermine the claim as these witnesses only appear from 1988 onwards and as public surveillance of paths is likely to be a largely incomplete record, this cannot be relied upon to negative the existence of a path, especially due to the small number of witnesses (seven).
13. The statement refers to videos of the path submitted that show the path in an overgrown and impassable state. The Rights of Way team make two main observations from the videos. Firstly, although overgrown at head height and

obstructed at the end, the path appears to be well defined on the ground in its width and linearity and is reasonably clear of obstruction in parts for the first 2-3 metres off the ground. The density of overgrowth demonstrated in the video does not indicate a path that has always been obstructed, this level of overgrowth is to be expected within 5 years without maintenance.

14. The statement further alleges that the strip of land was used by a previous owner as a vegetable patch or was only constructed for the purpose of wall maintenance. It seems unlikely that an overshadowed strip of land like this would be used for the purpose of vegetable growing, or that land would be set aside purely for wall maintenance – almost all residential properties maintain their boundaries without such access.
15. A petition was produced by Mr. Michael Atherton to object to the creation of a public right of way between Sheringham Road and James Road. The action desired by those who had signed the petition was for the DMMO application to be dismissed. The petition is signed by 54 people.

Potential for Extinguishment

16. It is possible in principle for BCP Council to extinguish Public Rights of Way where they have fallen into such disuse that they are considered to be no longer needed for use by the public. In the case of this application, the claimed path appears to have fallen into disuse through lack of public demand, therefore there exists at least a possibility for a member of the public to apply to have the path extinguished. It is also possible that the path is not used because it is currently obstructed.
17. Any extinguishment would require a public consultation and advertisement of an Order which could be objected to by the public. In any arising Public Inquiry, the Inspectorate would consider not just the likely need of the public for the path but also the impact of an extinguishment on adjoining landowners. It is therefore suggested that if an application for extinguishment is to be considered, that all landowners adjoining the path would need to be in agreement to the proposal.

Conclusion

18. The evidence as reviewed by the Rights of Way team suggests that user of the path as claimed gives rise to the status of a Public Footpath being reasonably alleged to subsist.

Summary of financial implications

19. If the Order is contested, BCP Council could be required to go through a Public Inquiry, which would incur the costs of external legal representation.
20. Failure to make progress in complying with the duty placed on the authority to survey and prepare a map for a Public Right of Way could attract a Judicial Review procedure if an external party felt sufficiently aggrieved by lack of progress. There are several interest groups with interest in this matter. The minimum financial costs attached to a contested Judicial Review would be circa £30,000.

Summary of legal implications

21. Failure to make progress in complying with the duty placed on the authority to survey and prepare a map for a Public Right of Way could attract a Judicial Review procedure if an external party felt sufficiently aggrieved by lack of progress.

Summary of human resources implications

22. If the order is contested the matter could escalate to the Planning Inspectorate for a decision and confirmation of the order, which in turn may result in a public enquiry. Legal representation would be required to represent as well as technical officer time. The Officers would also be required to notify all interested parties and host the inquiry.

Summary of environmental impact

23. No substantial environmental impact but could encourage increased walking leading to a slight reduction in carbon emission.

Summary of public health implications

24. This will have no substantial public health implications but would encourage walking with associated health and wellbeing benefits for users.

Summary of equality implications

25. An equalities impact assessment has been undertaken and identified that this will have positive benefits to persons regarding the following protected characteristics; age, disability and socio economic.

Summary of risk assessment

26. Failing to record Public Rights of Way could lead to the possible loss of paths, and in turn pedestrian urban permeability. It would also prejudice BCP Council's key objectives as set out in chapter 2 of the Rights of Way Improvement Plan.

Background papers

Bournemouth and Poole Rights of Way Improvement Plan 2017-2026 (Legacy Policy) <https://www.poole.gov.uk/streets-and-travel/cycling-and-walking/public-rights-of-way/>

Appendices

Appendix A - Plan of claimed path at James Road

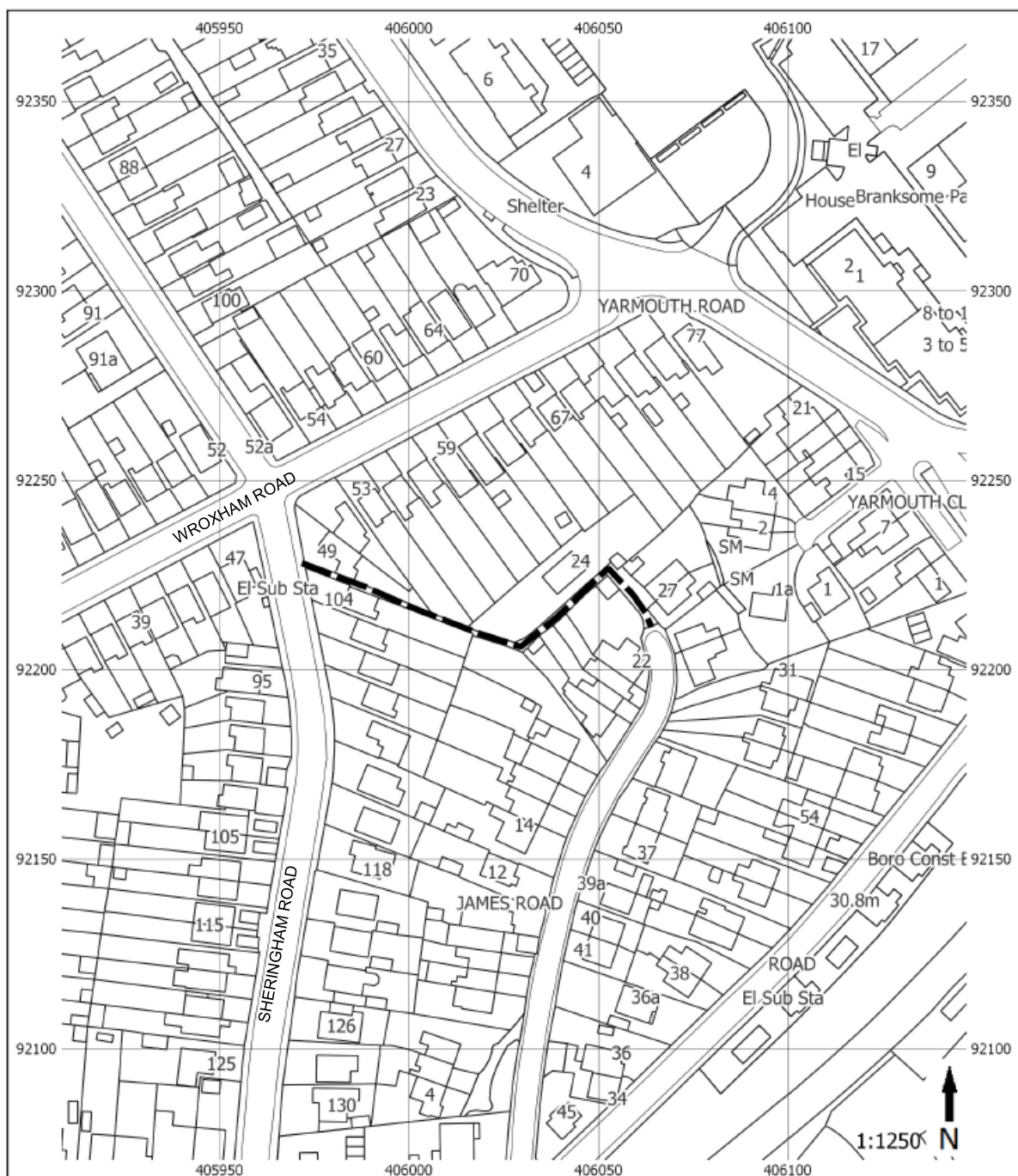
Appendix B - Historic map extracts

Appendix C - Summary of consultation responses

Appendix D - Extract from video of path facing North West, M. Atherton, 2016

Appendix E - User evidence chart

Appendix A – Map of Claimed Path



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Claimed Public Right of Way at James Road

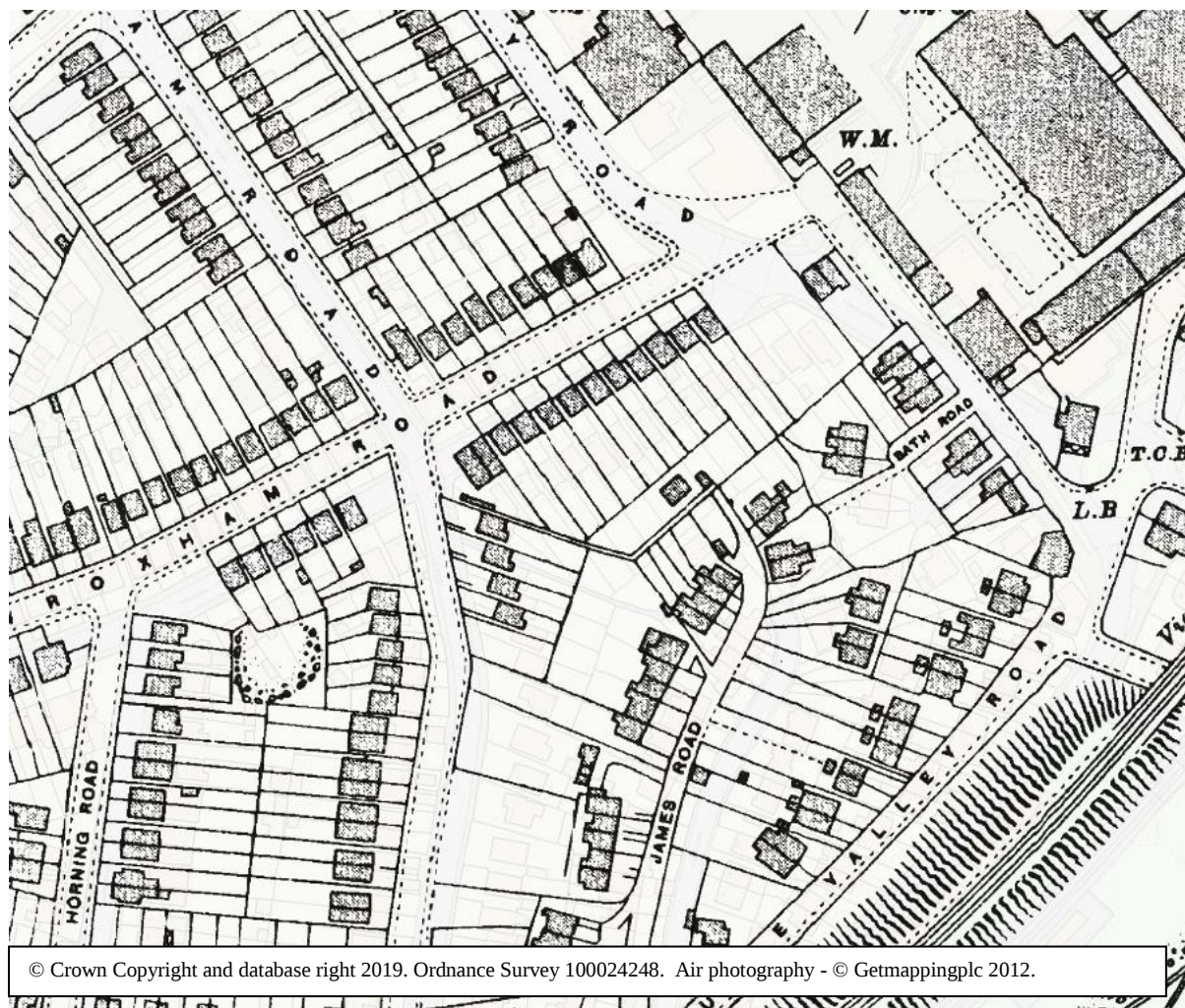
Legend

— Claimed Public Right of Way

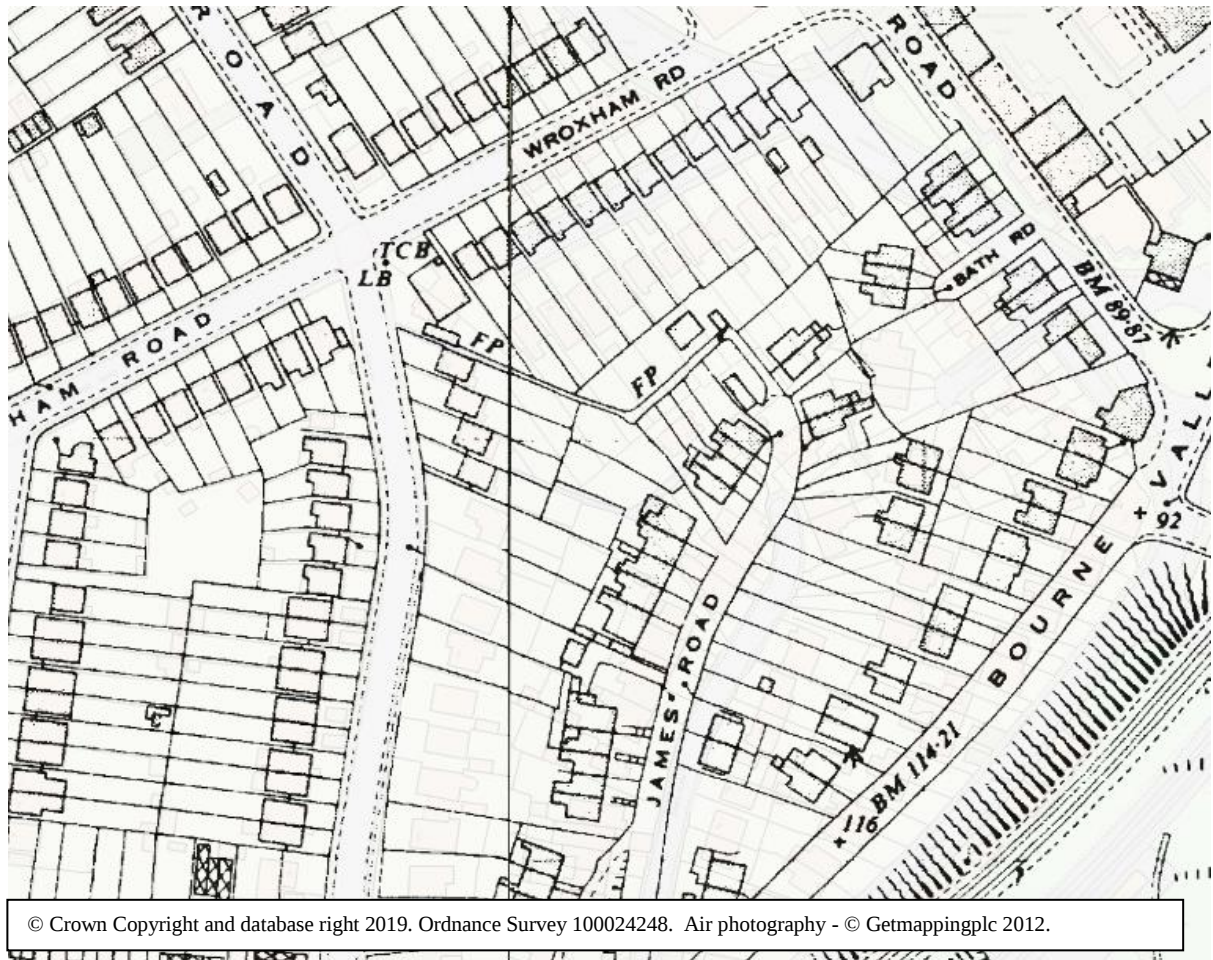
Rights of Way
BCP Council
Civic Centre
Poole
BH15 2RU
www.bcpCouncil.gov.uk



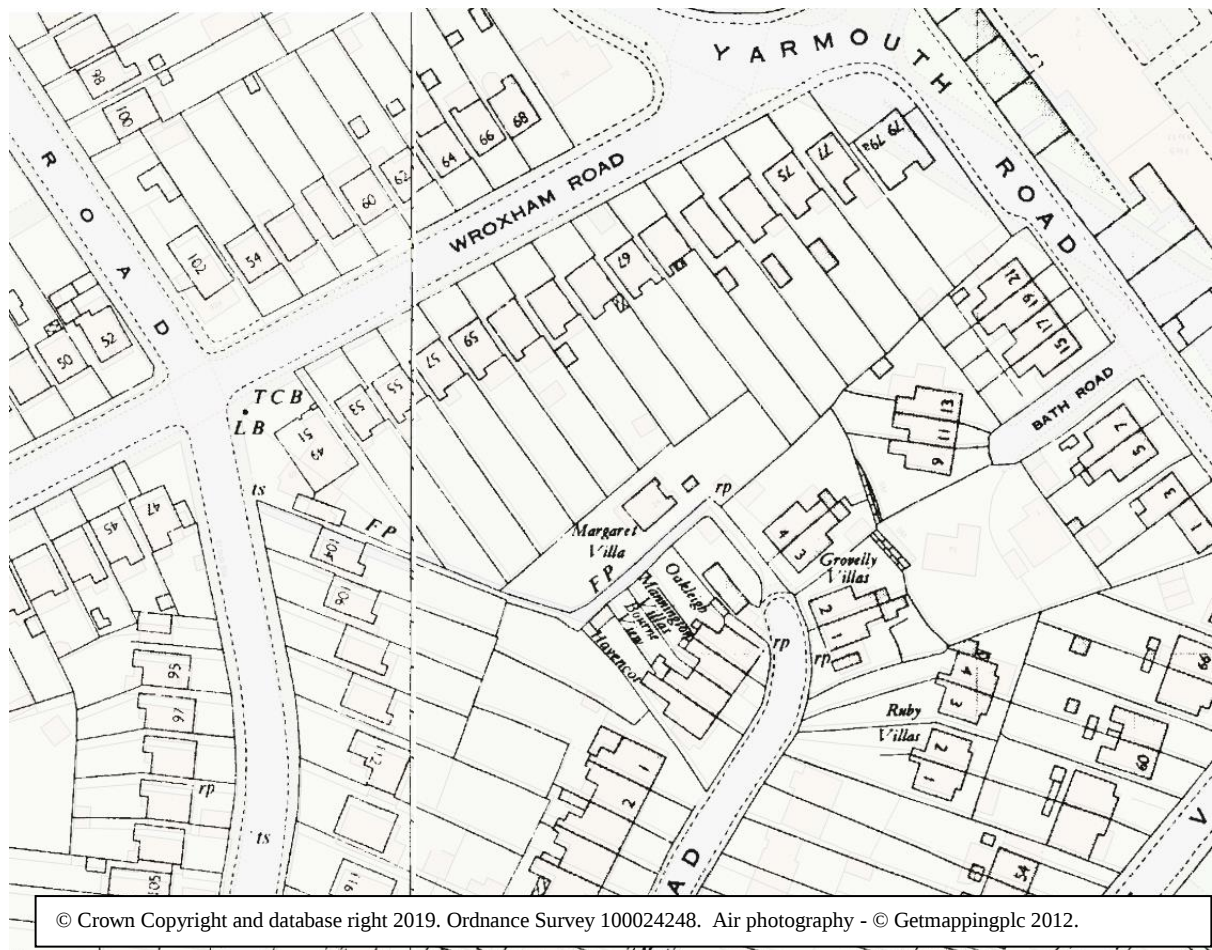
Appendix B – Historic Maps



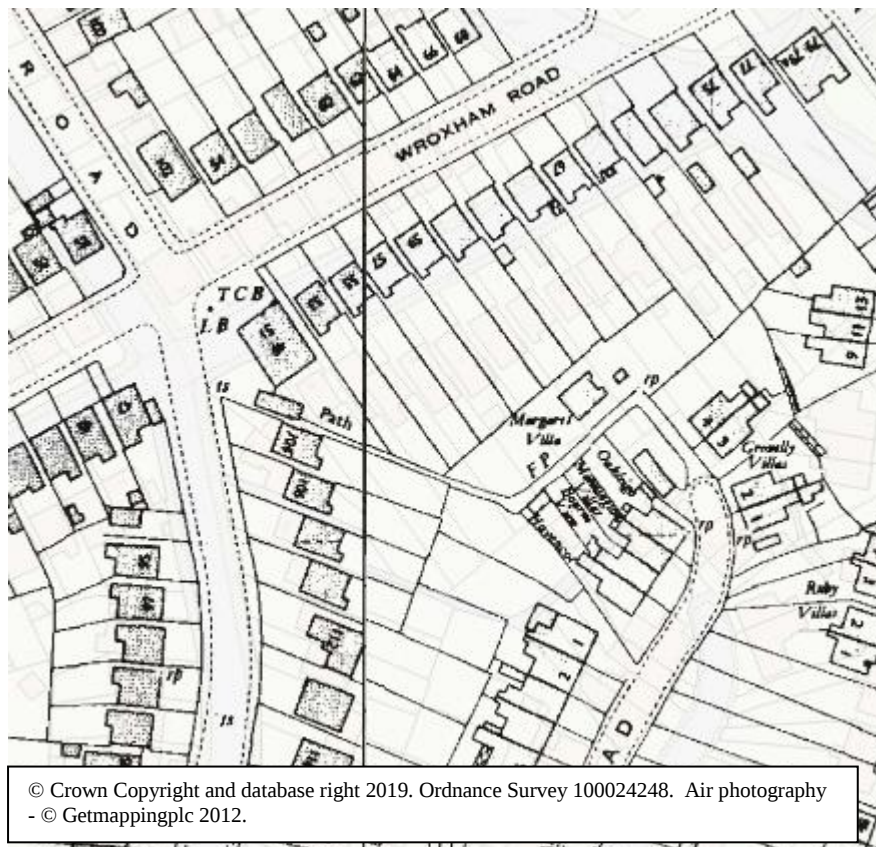
OS Maps 1931 – 1940



OS Map 1941 – 1950



OS Maps 1951 - 1960



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OS Map 1961 – 1980

Appendix C

Summary of Representations

The Advertisement prompted:

- 6 Objections including legal representation from a resident affected by the creation of the path.
- 10 people giving evidence of their usage of the path.

All of the objections state either that they have never seen anyone using the path or that to their knowledge the path is private either because they were informed as such by residents or because they had never noticed the path.

The evidence received in support of the path totals up to 61 years continuous user on foot.

If members wish to see the responses they are available within normal office hours Monday – Friday in room 159 at the Civic Centre in Poole.

Appendix D – Extract from video submitted by Mr. M. Atherton, view of path facing North West from East end of 104 Sheringham Road garden, taken 2016.



Appendix E – Claimed witness period

