

From: Maria McLauchlan (Public Rights of Way Officer – Definition Team)
To: Corporate Director of Growth, Environment & Transport
Subject: **Claimed amendment to the alignments of public footpaths CB285 & CB296 at Bridge & Bishopsbourne**
File Ref: PROW/CC/C363 **District:** CANTERBURY

Summary: To seek delegated authority to decline to make an Order to modify the Definitive Map and Statement by amending the alignments of public footpaths CB285 & CB296 at Bridge & Bishopsbourne.

FOR DECISION

Introduction

1. The County Council is the Surveying Authority for Kent and is responsible for producing a Definitive Map and Statement of Public Rights of Way. The current Definitive Map and Statement were published on 31st May 2013. Under the Wildlife and Countryside Act 1981, the County Council is under an obligation to keep the Map and Statement under continuous review.

Procedure

2. The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date and ensuring that the status and alignment of all PROW are correct in accordance with statutory duties by:
 - a) Investigating and determining all claims in accordance with the statement of priorities
 - b) Investigating and determining anomalies in accordance with statement of priorities
 - c) Processing applications to change PROW in accordance with policy and statement of priorities.
 - d) Ensuring all changes are covered by a formal Order

Definitive Map modification cases will normally be investigated in the order in which applications are received, except in any of the following circumstances, where a case may be investigated sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document,
- Where the physical existence of the claimed route is threatened by development,

- Where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated.
3. The investigation of this particular issue has been carried out in accordance with the report to the Sub-Committee in February 1990, which outlined the procedures to be used for sources of evidence and the legal tests to be applied.

Legal Tests

- 4 a) Section 53(3)(c)(i) of the 1981 Act states that where the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, it shall, by Order, make such modifications to the Map and Statement as appear requisite.
- b) Section 53(3)(c)(iii) of the 1981 Act states that where the County Council discovers evidence which, when considered with all other relevant evidence available to it, shows that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification, it shall, by Order, make such modification to the Map and Statement as appear requisite.
- c) Paragraphs 4.30-4.35 Defra Circular 1/09, Version 2, October 2009 set out guidance relating to deletions of PROW. Paragraph 4.33 sets out the need to fulfil certain stringent requirements.
- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
 - The evidence must be of sufficient substance to displace the presumption that the definitive Map is correct.
 - The evidence must be cogent.
- d) The case of *Trevelyan v. Secretary of State for the Environment, Transport and the Regions (2001)* reinforced earlier Defra Circulars with regard to cogency of evidence. In this case Lord Phillips stated:
"Where the Secretary of State or an Inspector appointed by him has to consider whether or not a right of way that is marked on a definitive map exists, he must start with an assumption that it does. If there were no evidence which made it reasonably arguable that such a right existed, it should not have been marked upon the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that a right of way exists is no more than a balance of probabilities. But evidence of some substance must be put into balance, if it is to outweigh the initial presumption that the right of way exists".

The Case

- 4. A plan showing the claimed routes is included at **Appendix A** to this report and a detailed description of the case can be found in **Appendix B**.

Investigation

- 5. Investigations have included interviews of users of the routes and the inspection of County Council records and documents available from other sources.
- 6. I have considered all the evidence available. The analysis of the user and documentary evidence and the results of the legal tests applied are set out and examined in **Appendix B**.

Conclusion

- 7. Investigations have been carried out in accordance with procedures and proper legal tests have been applied to the evidence gathered during the investigation. The result of the investigation is that there is not sufficient evidence to indicate the alignments of public footpaths CB285 & CB296 have been incorrectly recorded.

Recommendation

- 8. I recommend that the County Council declines to make an Order to modify the Definitive Map and Statement by amending the alignments of public footpaths CB285 & CB296 at Bridge & Bishopsbourne, as shown on the attached plan at **Appendix A**.

Signature:
 On behalf of the Corporate Director of Growth, Environment and Transport


Date:

Background Documents:

- APPENDIX A – Plan showing the claimed routes and extract from the Definitive Map (Sheet 151 (TR15SE))
- APPENDIX B – Main report

Contact Officer:

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	Reference: PROW/C/C/363		0 Miles 0.375 0.75 Kilometres
	Created by: MML	Checked by: MML	

Public Rights of Way and Access Service

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Wildlife & Countryside Act 1981
 Claimed amendment to the alignment of
 public footpaths CB285 & CB296 at
 Bourne Park & Bishopbourne
 Bridge

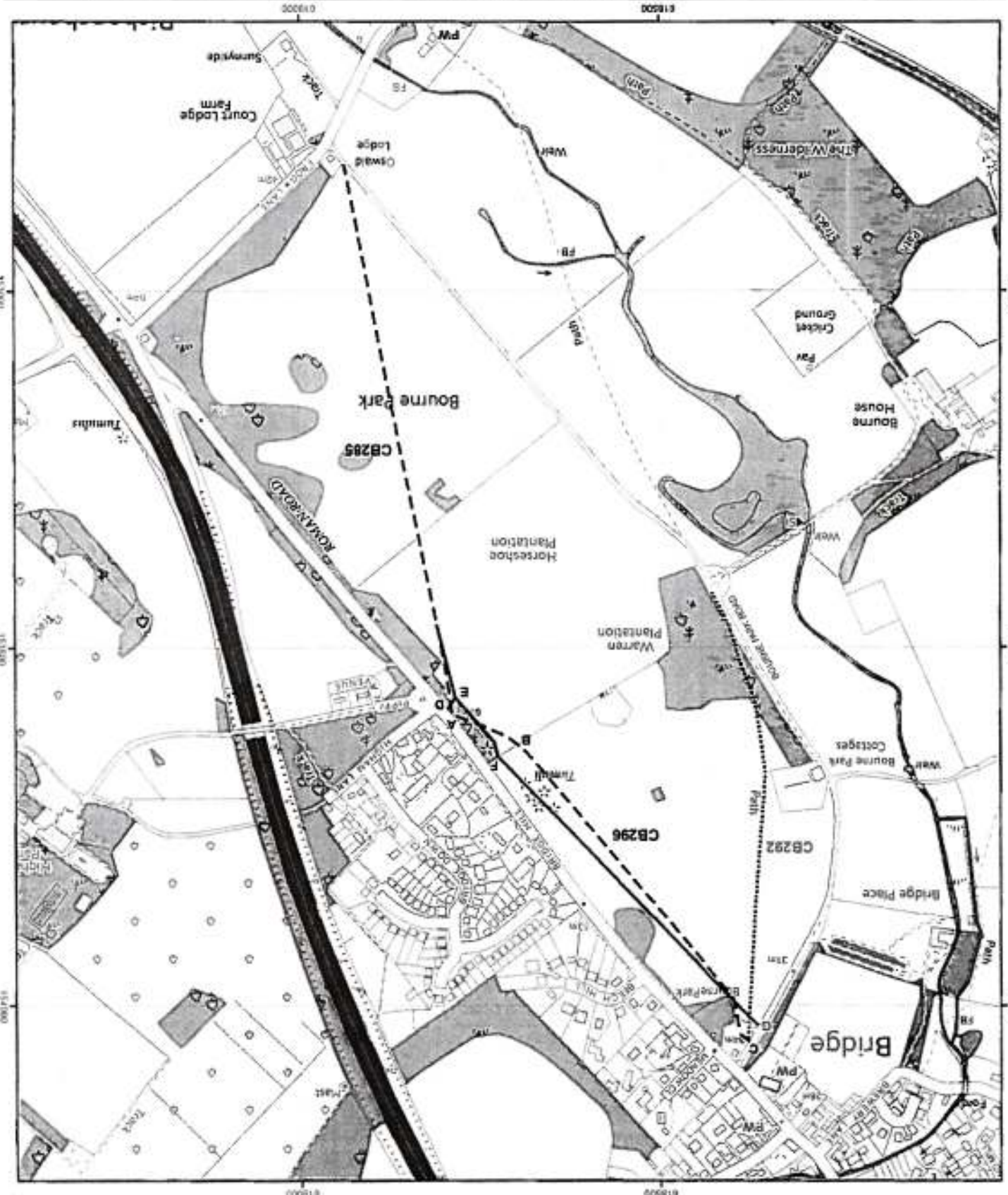
Key

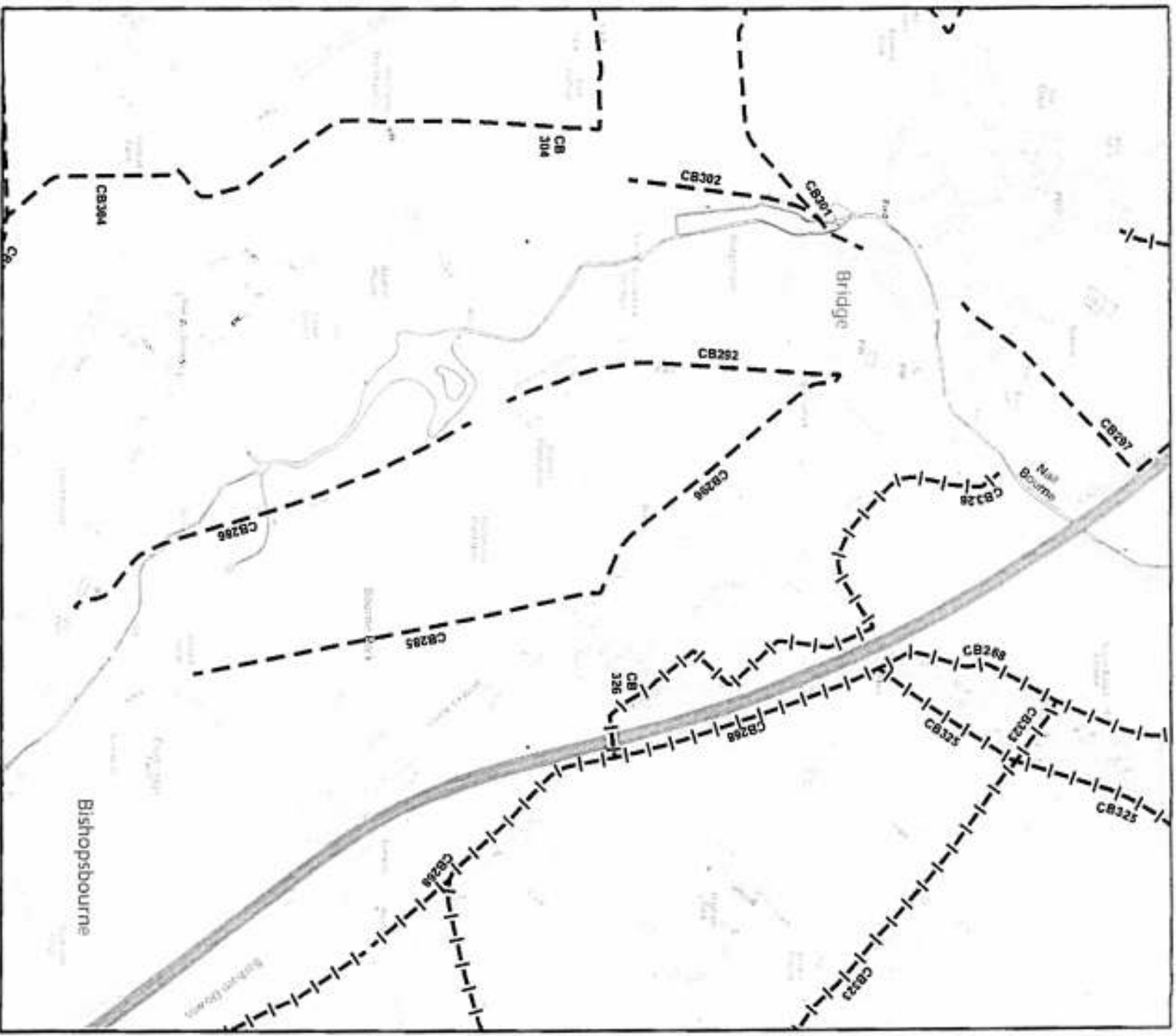
- Claimed alignment
- Recorded alignment
- Unaffected Routes

PLAN NOT TO ORIGINAL SCALE

1:5,000

N





- Footpath
- - - Bridleway
- · - · Restricted Byway
- ~ ~ ~ Byway Open to All Traffic
- Point path number or status changes
- ■ ■ Boundary of area covered by 1:2500 scale Network Map
- ▨ Area covered by 1:2500 scale Network Map



EXTRACT OF THE WORKING COPY OF THE DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF KENT

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Created by:	MMcL
Checked by:	MMcL
Issue Date:	12/07/2017
Reference:	
Map sheet	TR15SE



APPENDIX B

Case Title: Claimed amendment to the alignments of public footpaths CB285 & CB296 at Bridge & Bishopsbourne

Ref: PROW/CC/C363

INTRODUCTION and BACKGROUND

9. The application has been made by local resident Mrs Mimi Hoare ("the applicant"). The applicant has applied for an Order under Section 53(5) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement for the area by amending the alignments of public footpaths CB285 & CB296 at Bridge & Bishopsbourne ("the claimed routes"). The application was made in 2014 following the erection of fencing along the paths.
10. The landowner had made a request to the County Council to fence in the paths as she had been having problems with dogs and her sheep. It was then discovered that the routes walked on the ground were not on the same alignment as the Definitive Map, including where the gates were located. As a consequence, a survey was undertaken and the routes fenced according to the definitive alignment. The changes made on the ground as a result of this instigated the application, in particular as walkers found it difficult to negotiate their way through the wooded area where there remained tree stumps and tree roots, and there was concern that walkers were subsequently being made to walk over a Saxon cemetery and burial mound. In support of the application 22 initial user evidence forms were submitted (4 of these were jointly made with a partner at the same address) from people who stated they had used the routes on the claimed alignments.

Description of routes

11. The plan at **Appendix A** shows the both the definitive alignment of the footpaths (shown as bold dashed lines) and the claimed alignments (shown as a solid line). Both footpaths run, in the main, over the open parkland known as *Bourne Park*, with boundary fences dissecting the land into separate fields. Footpath CB296 commences on Bridge Hill (point A) and runs generally north-west, initially through a narrow strip of woodland then out onto the parkland. It enters the grounds of *Bridge Lodge* before it reaches its connection with footpath CB292 on Bourne Park Road at point C. Footpath CB285 commences at the same point on Bridge Hill as CB296 and runs generally south-south-east to its connection with Bourne Park Road close to Frog Lane.
12. The claimed alignment of both paths commences on Bridge Hill approximately 8 metres south-east of the recorded alignment (point D). Initially they run as one path through the narrow, wooded area then go separate ways through the parkland at point E where there has been a gate (and previously a stile) for many years. From this point, the claimed alignment of footpath CB285 almost immediately joins up with its definitive alignment, running as a straight diagonal line to the southern corner of the field. From point E, the claimed alignment of footpath CB296 runs generally north-west, heading through a gate (previously a stile) at point F. It continues to a gate at point G on Bourne Park Road, approximately 22 metres south-west of the connection to the road of the definitive alignment.

Parish Map (1950)

19. In consequence of the National Parks and Access to the Countryside Act 1949, County Councils were required to undertake a survey of 'all lands in their area over which a right of way... [was] alleged to subsist' and then to prepare a draft map showing on it those footpaths, bridleways and roads used as public paths which the County Council as Surveying Authority considered to be public rights of way. In practice, the initial surveys were undertaken by the Parish Councils who were required to call a Parish Meeting to consider the information to be provided and who then submitted maps and statements showing the alleged rights of way within their parish.
20. Footpath CB285 is entirely within the Parish of Bishopsbourne; footpath CB296 is within the Parishes of Bishopsbourne and Bridge. The Parish Map for Bishopsbourne shows part of footpath CB296 as number 1 as far as the boundary with Bridge Parish and footpath CB285 as number 2. Both paths are shown as connecting to each other at Bridge Hill rather than in the parkland. The Parish Statement has the following entries:
FP1. From Bridge Hill (A2) opposite entrance to Highland Court in a north-westerly direction to Parish boundary.
FP2. From Bridge Hill (A2) opposite entrance to Highland Court in a south-easterly direction across Bourne Park to Bishopsbourne Lodge at kissing gate.
21. The Parish Map for Bridge shows CB292 marked up for inclusion as number 1 and CB296 as number 2. These two paths converge on Bourne Park Road at the corner of Bridge Lodge. At the Parish boundary between Bridge and Bishopsbourne, CB296 (annotated 2) is shown at a distance from Bridge Hill as that on the current Definitive Map. The Parish Statement has the following entry:
FP2 (corrected from BR2). Undefined track from stile at entrance to Bourne Park entrance proceeding across park land in a south-easterly direction to exit at top of Bridge Hill opposite entrance to Highland Court.

Draft Maps (1952)

22. Following consultation with the District Councils, the County Council then prepared a Draft Map from the information contained in the Parish Map.
23. The Bishopsbourne Draft Map shows the routes in the same way as its Parish Map. The accompanying statement has the following entries:
FP1 FOOTPATH. Bishopsbourne to Bridge. Commences at Bridge Hill A2 opposite entrance to Highland Court (Bridgehill House). Leads NW for 100 yards to Bridge Parish boundary.
FP2 – FOOTPATH. Bridge to Bishopsbourne. Commences Bridge Hill A2 opposite entrance to Highland Court (Bridgehill House). Leads S across Bourne Park to Kissing Gate at Bishopsbourne Lodge on unclassified road.
24. The Bridge Draft Map shows the routes in the same way as its Parish Map. The accompanying statement has the following entry:
FP2 FOOTPATH. Bridge to Bishopsbourne. Commences at junction with unclassified road and FP1 (CB292) 60 yds SSE of St Peters Church and leads SE to Bishopsbourne Parish boundary 150 yds W of Bridgehill House.

32. In this case the landowner submitted a Deposit application in September 2014, using a copy of the 1987 Definitive Map for the accompanying plan, indicating that she accepts the alignments shown on that map as correct.

33. CONSULTATIONS

County Member and City Councillors

33a. County Member Michael Northey and City Councillor Simon Cook but no response was received.

Canterbury City Council

33b. Canterbury City Council has been consulted but did not respond.

Bridge and Bishopsbourne Parish Councils

33c. Bridge Parish Council shared the information with its parishioners and had no objection to the application. Bishopsbourne Parish Council did not respond.

User Groups

33d. The Ramblers, Open Spaces Society and British Horse Society were consulted.

33d(i). The Ramblers' representative for the area responded that he further consulted with the Local Footpaths' Officer for East Kent and Dr Maurice Raraty (President of Bridge History Society). He also spoke to a local dog walker that he met whilst on site. Following his observations and discussions he recommended the following:

A – The termination of CB296 on Bourne Park Road should remain where it is on grounds of costs and, more importantly, of access to the church and proximity to a lay-by.

B – The *claimed* alignment of CB296 up to the boundary fence is the more suitable route, as it follows what appears to be the current and only marked route that walkers generally take.

C – The *claimed* route connecting CB296 and CB285 running by the tree line should be opened up and recorded and access between the main road and the footpaths should be maintained as in the recorded alignment.

D – It is unnecessary and too disproportionate to enclose CB285 on its north-eastern side and hoped that no further fencing in of PROWs would be permitted.

E – Any (re-)configuration of the PROW alignments here need to show awareness of and sensitivity to its archaeological heritage.

33d(ii). Another Ramblers' representative (albeit for a different area) responded that he had used the routes on a number of occasions since 1986. Although he could not be sure of a precise alignment due to the open nature of the land, he confirmed that you could walk direct from CB285 to CB296 without the need to go through the wooded area or out onto Bridge Hill. He also confirmed that the gate exiting onto Bourne Park Road at the north end was originally a stile but it never cut across the garden of *Bridge Lodge*.

33d(iii). The Open Spaces Society representative had no evidence to support or negate the application, stating they are neutral in this matter.

USER EVIDENCE

34. These paths are extensively used by local people and have been for many years, since at least 1950. It is not considered that a usergram or a tabulated analysis of that use would be particularly helpful here as all those who submitted evidence state they have used the routes on the claimed alignments, particularly at the points where CB285 and CB296 meet near Bridge Hill, and where CB296 exits onto Bourne Park Road. These were the focal points, where walkers had to go over a stile and later through a gate. Where the routes then continued over open parkland there is a greater chance of variance to the walked lines between the stile / gates. In addition to the user evidence forms submitted with the application, a number of face to face interviews were conducted.
35. Users stated that access to the footpath at the top of Bridge Hill has always been directly (straight) through the wooded area along a well-defined and well-worn pathway to a stile originally, which was later replaced by a gate. In addition, users stated the path always ran through the field along the top of the hill. Stiles, later replaced by gates, and waymarking indicated where the routes ran, the furniture being on the claimed alignments. Some users stated that the line walked may vary depending on the routes taken, so if they were doing more of a circular walk in the north-western field, they would use part of footpath CB292 then come up along the field boundary at its southern end to finish by using an alignment closer to that recorded. One person who had used the path since the 1950s remembered a stile located at point B originally which was later moved to point F in the 1980s. Another witness who had used the path since the 1950s also stated that the stile at point F was not there originally.
36. A couple of users recalled that the point where CB296 exits onto Bourne Park Road had been moved by the house owner in the 1970s when the garden was extended. One user also remembered Mr Neam (father of current owner of Bourne Park) had agreed to it and that notices went up about it.
37. In addition to the above, some users stated that it wasn't always easy to see where the path should run once in the field, especially when the grass was short.

LANDOWNERS

38. The majority of the land over which the routes run is owned by Mrs Vanessa McDonald. Mrs McDonald has owned the land since 2002 with her father owning the land before her since 1962. Prior to that, the land was owned by Sir John Prestige between 1927-1962. The gates on the routes were provided by the Public Rights of Way department in about 2005 and replaced stiles at the same locations. When Mrs McDonald asked the Public Rights of Way department about fencing the path due to dogs causing problems with her sheep in 2013, she was informed that the gates were not on the recorded alignment of the paths. In order to fence the path to protect the sheep, changes to the walked alignments had to be made near to Bridge Hill, resulting in people no longer being able to walk directly from one path to the other without going out of the parkland. Mrs McDonald was vaguely aware of CB296 not being correct at the northern end by Bridge Lodge, and was to see if she could find anything in her father's paperwork that could assist. She has not come back with anything.

44. The case of *Trevelyan v. Secretary of State for the Environment, Transport and the Regions (2001)* reinforced earlier Defra Circulars with regard to cogency of evidence. In this case Lord Phillips stated:

"Where the Secretary of State or an Inspector appointed by him has to consider whether or not a right of way that is marked on a definitive map exists, he must start with an assumption that it does. If there were no evidence which made it reasonably arguable that such a right existed, it should not have been marked upon the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that a right of way exists is no more than a balance of probabilities. But evidence of some substance must be put into balance, if it is to outweigh the initial presumption that the right of way exists".

ANALYSIS

45. In this case, the routes in question are consistently shown on the relevant mapping in the same position as the current Definitive Map. From the 1st Edition Ordnance Survey Map to the current Definitive Map CB296 is shown on the same alignment; from the Parish Map to the current Definitive Map CB285 is shown on the same alignment. In addition, descriptions in all the accompanying statements are consistent with each of the paths exiting (or commencing) at the same point on Bridge Hill (also referred to as Dover Road and A2) and not just one of the paths connecting to that point, as the application claims.
46. The response from Kent's Heritage Team is further evidence that the paths have been recorded correctly. It is well known that there is an Anglo-Saxon cemetery (users calling it the 'Saxon burial ground') at the site, but the Heritage Team point out that *"Looking at the route of the existing footpath it would seem to have been deliberately sited to avoid the main cemetery."* The team also points out that the proposed new route takes the path straight through the middle of the cemetery.
47. Irrespective of where furniture (stiles or gates) had been erected and where people may have walked as a consequence, there is nothing in the evidence to suggest the paths were incorrectly recorded.
48. In addition, walking from each item of furniture, many users varied their route depending on where they were going or just because the open nature of the land allowed them to. This amounts to no more than wandering off the definitive line.
49. As set out at paragraph 43 above, in the case of deletions of public rights of way, the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made; the evidence must be of sufficient substance to displace the presumption that the definitive Map is correct; the evidence must be cogent. In this case, the only evidence put forward to claim the routes were incorrectly recorded is evidence of use as to where some people have walked over the years. This is therefore, not new (in the sense of what evidence there was at the time of recording the routes), not of sufficient substance, and not cogent for the reasons set out above.
50. Therefore, there is no evidence to suggest that the claimed routes should be recorded on the basis of use for a period in excess of 20 years.

CONCLUSION

51. In light of the information above, it is considered that the claimed routes should not be recorded and that the definitive lines of both paths remain unaltered.

RECOMMENDATION

52. I recommend, therefore, that the County Council declines to make an Order to amend the alignment of public footpaths CB285 and CB296 as shown on the plan at **Appendix A**.