

## REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

<b>DATE OF MEETING:</b>	<b>28 JULY 2015</b>
<b>SUBJECT OF REPORT:</b>	<b>OXHOUSE LANE TO FERNEY ROW</b>
<b>TOWN OR PARISH:</b>	<b>FAILAND</b>
<b>OFFICER/MEMBER PRESENTING:</b>	<b>ELAINE BOWMAN</b>
<b>KEY DECISION:</b>	<b>NO</b>

### RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise the making of a Definitive Map Modification Order upgrading the route Footpath LA20/63 shown as A-B on the plan EB/Mod 15 to a Bridleway to be known as LA20/63 on the Definitive Map;
- (ii) if no objections are made and sustained, that authorisation be given for the confirmation of the Order; and
- (iii) that if objections are made, that the Order will be forwarded to the Secretary of State for determination. If this happens, subject to officers being content that there was no significant change to the balance of evidence, the Council will support the Order at any subsequent Public Inquiry.

### 1. SUMMARY OF REPORT

The report relates to a historical application for a Definitive Map Modification Order under Section 53(5) of the Wildlife and Countryside Act 1981. The applicant at that time (October 1994) was claiming that a couple of bridleways should be recorded through land belonging to Failand Farm. Following receipt of notification of the application the landowner agreed to dedicate a number of routes through Failand Farm in exchange for the withdrawal of the claim, this took place on 1 March 2002. However one small section of this route fell outside of the ownership of that landowner. That section still remains recorded as Footpath LA20/63 although is being used as a Bridleway. The effect of this request should an order be made and confirmed would be to amend the Definitive Map and Statement for the area in regard to this one section.

A Location plan, EB/Mod 15, showing the affected route is attached to this report.

In order that members may consider the evidence relating to this application, further details about the claim itself, the basis of the application, and an analysis of the evidence are included in the Appendices to this report, listed below.

Members are also welcome to inspect the files containing the information relating to this application, by arrangement with the Public Rights of Way Section.

## Location Plan EB/Mod 15

**Appendix 1** – The Legal basis for deciding the claim

**Appendix 2** – History and Description of the Claim

**Appendix 3** – Evidence provided by the Applicant

**Appendix 4** – Historical Records

**Appendix 5** – Consultation and Landowner Response

**Appendix 6** - Summary of Evidence and Conclusion

**Document 1** - User Evidence Form Summary of detail

**Document 2** - Tabular illustration of use

**Document 3** – 1782 Day and Masters

**Document 4** – 1822 Greenwood

**Document 5** – 1843 Epoch 1 Map Base

**Document 6** – 1884 Base Map

**Document 7** – 1891 Epoch 2 Map Base

**Document 8** – 1945 Epoch 5 Nat Grid Survey

**Document 9** – Definitive Map Extract

## 2. POLICY

The maintenance of the Definitive Map is part of the management of the public right of way network and so contributes to corporate aims 2 “enhancing health and well-being” and 3 protecting and improving the environment”.

## 3. DETAILS

### Background

#### i) The Legal Situation

North Somerset Council, as Surveying Authority, is under a duty imposed by the Wildlife and Countryside Act 1981, Section 53(2) to keep the Definitive Map and Statement under continuous review. This includes determining duly made applications for Definitive Map Modification Orders.

The statutory provisions are quoted in **Appendix 1**.

#### ii) The Role of the Committee

The Committee is required to determine whether or not a Definitive Map Modification Order should be made. **This is a quasi-judicial decision and it is therefore essential that members are fully familiar with all the available evidence. Applications must be decided on the facts of the case, there being no provision within the legislation for factors such as desirability or suitability to be taken into account.** It is also important to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any

representations, to the Department of the Environment, Food and Rural Affairs (DEFRA) for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Government Office for the South West.

## **Conclusion**

The Committee must consider whether, given the evidence available to them, that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. If the Committee is of the opinion that this test has been adequately met, it should determine that the Definitive Map Modification Order should be made. If not, the determination should be that no order should be made. See **Appendix 1**.

## **4. CONSULTATION**

Informal consultations have been undertaken with landowners, Parish Council, Local Members, interested parties and relevant user groups. Detail of the correspondence received is included in **Appendix 2**.

## **5. FINANCIAL IMPLICATIONS**

If authority is given for an Order to be made then the Council will incur financial expenditure in line with the advertisement of the Order. Further cost will be incurred if this matter needs to be determined by a Public Inquiry. These financial considerations must not form part of the Committee's decision.

## **6. RISK MANAGEMENT**

The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible. The Council's decision must be made considering all of the evidence correctly. The applicant has the right to appeal to the Secretary of State who may change the decision of the Council if it decides not to make an Order and direct that an Order should be made. Alternatively if an Order is made objections can lead to a Public Inquiry.

## **7. EQUALITY IMPLICATIONS**

Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

## **8. CORPORATE IMPLICATIONS**

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

## **9. OPTIONS CONSIDERED**

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order.

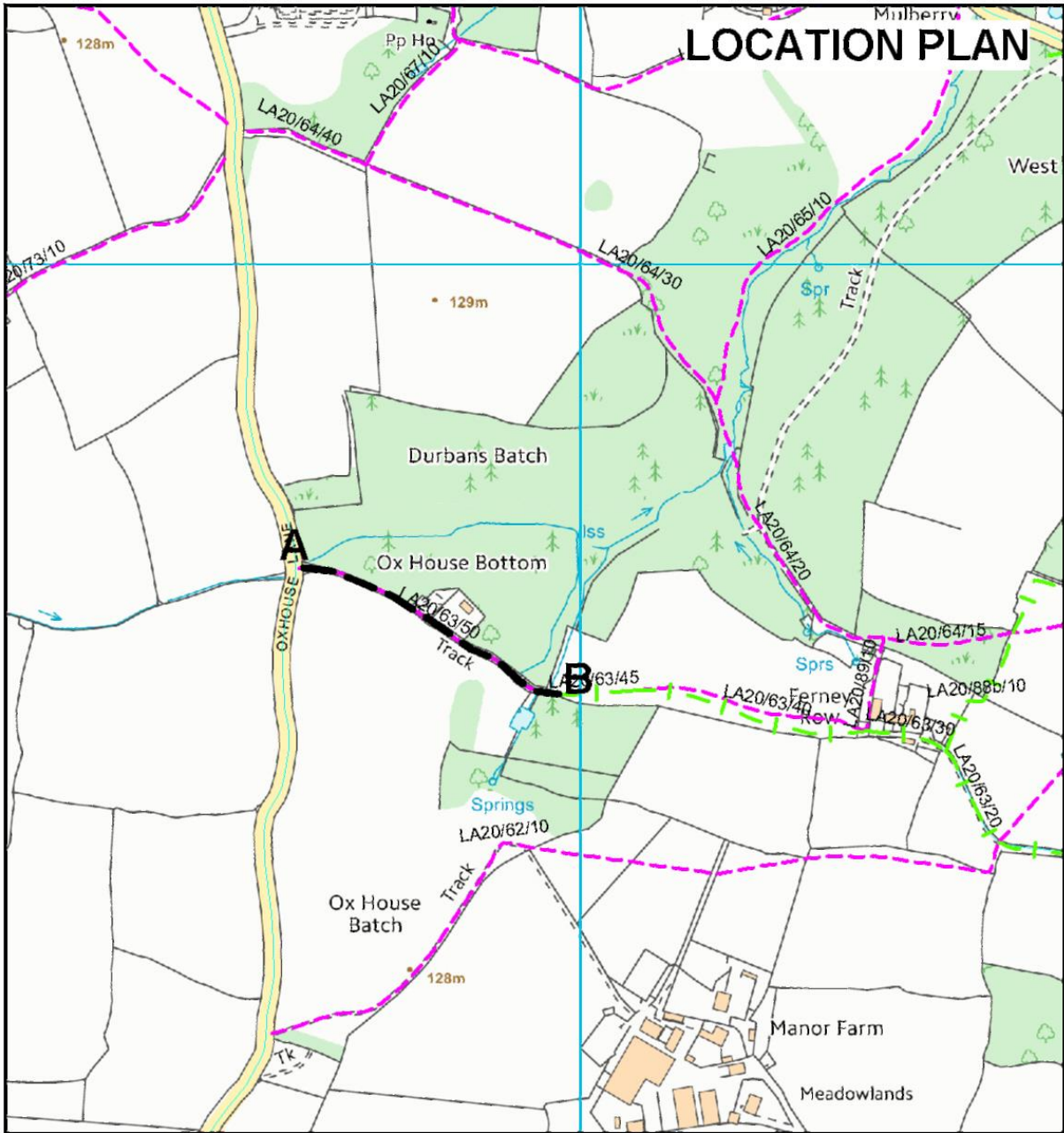
3. If option 1 has been recommended it is necessary to establish whether the Committee wish to support the Order and if objections are received and the Order forwarded to the Secretary of State that the Council will support the Order through its determination; or
4. To establish whether the Committee wish the Council to be a neutral party, neither opposing or supporting the making of this Order and thereby continue to be a neutral party through its determination; and
5. To seek the Committee's authority to confirm the Order if no representations or objections are received.

## **AUTHOR**

Elaine Bowman  
Senior Access Officer Modification  
Natural Environment Team Ext 7406

## **BACKGROUND PAPERS**

Rights of Way Section  
File Ref: Mod 15 and PPO 26 (Archives Box 18)



Wildlife & Countryside Act 1981 - Section 53 North Somerset District Council  
**Pre Order Consultation for Definitive Map Modification Order**  
**Upgrade of Footpath LA20/63 to Bridleway LA20/63**  
**Oxhouse Lane Failand**

**North Somerset COUNCIL**

**Development & Environment**

Public Rights of Way  
 Streets and Open Spaces  
 North Somerset Council  
 Town Hall  
 Walliscote Grove Road  
 Weston-super-Mare  
 BS23 1UJ  
 Tel: 01934 888 802



Scale 1:5000

Date 26 August 2014

Grid Ref. ST5172

Map No. EB/Mod 15

Claimed route  
 - - - - -  
**A - B**

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## The Legal Basis for Deciding the Claim

1. The original application was made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and keep the Definitive Map and Statement up to date, then making by Order such modifications to them as appear to be required as a result of the occurrence of certain specified events.
2. Section 53(3)(b) describes one event as, "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway". See paragraph 4.

Subsection 53(3)(c) describes another event as, "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (ii) "that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description"

The basis of the application in respect of Footpath LA20/63 is that the requirement of Section 53(3) (c) (ii) has been fulfilled.

3. Section 32 of the Highways Act 1980 relating to evidence of dedication of way as highway states " A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered documents, 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 is produced".
4. Section 31 (1) of the Highways Act 1980 provides that, "Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it".

Section 31 (2) states, "the period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by a notice or otherwise".

Section 31 (3) states, "Where the owner of the land over which any such way as aforesaid passes-

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

For a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. It is necessary to show either that the landowner accepted the use that was being made of the route or for the use to be so great that the landowners must have known and taken no action. A deemed dedication may be inferred from a landowners' inaction. In prescribing the nature of the use required for an inference of dedication to be drawn, the same principles were applied as in the case of a claim that a private right of way had been dedicated; namely the use had been without force, without secrecy and without permission.

**The Committee is reminded that in assessing whether the paths can be shown to be public rights of way, it is acting in a quasi-judicial role. It must look only at the relevant evidence and apply the relevant legal test.**

5. Modification orders are not concerned with the suitability for use of the alleged rights. If there is a question of whether a path or way is suitable for its legal status or that a particular way is desirable for any reason, then other procedures exist to create, extinguish, divert or regulate use, but such procedures are under different powers and should be considered separately.

### History and Description of the Claim

An application requesting the modification of the Definitive Map and Statement was received from a representative for Woodspring Bridleways Association dated 25 October 1994 and is listed as Mod 15. User Evidence Forms were submitted in support of the re-designation of Footpaths LA20/62 and LA20/63 and Green Lane to Bridleways. These footpaths crossed land owned by Mr D Simons of Failand Farm except for one section of Footpath LA 20/63 which runs from Oxhouse Lane to the landownership boundary of Failand Farm.

The section of Footpath LA20/63 is illustrated on EB/Mod 15; it commences on Oxhouse Lane Point A and proceeds in a south easterly direction for 263 metres passing a property called Keepers Cottage to Point B where the route then continues as Bridleway.LA20/63

The application was discussed with both Mr Simons of Failand Farm and Cluttons Daniel Smith acting for the Trustees of Captain WDM Wills New Grandchildren's Settlement Abbots Leigh & Failand Estate ("Trustees"). A letter dated 28 May 1999 was received from Cluttons Daniel Smith confirming that their clients, the Trustees, had no objection to the dedication of a bridleway as long as the Trustees retained full rights of access with vehicles along the area of the track (A – B).

Dedication Agreements were sent to the Trustees and Mr Simons of Failand Farm. Mr Simons agreed to dedicate the routes on his land as Bridleways on the understanding that the application would be withdrawn. On the 1<sup>st</sup> March 2002 the dedication agreement from Mr Simons was sealed by North Somerset Council. The dedication agreement sent to the Trustees was never returned.

On the 27<sup>th</sup> March 2002 Woodspring Bridleways Association confirmed that their application was withdrawn in so far as it related to the sections of the routes claimed within the land owned by Mr D Simons. Due to the section of the route from Oxhouse Lane to Ferney Row not being within the same ownership they wished to maintain the application for that part of the route.

Investigation resumed into looking at this matter in 2006 when the Trustees were contacted once again. Since that time all effort has been made to obtain a dedication agreement from the Trustees, sadly this seems to have failed. The suggestion was also made that this land would be transferred to the Council however an acceptable response to questions raised by our Estates Officer has not been received.

Consultation letters were sent out on the 27 August 2014 to interested parties including the Trustees representative asking for a response by 10 November 2014. One letter of objection was received from the owners of Keepers Cottage who have vehicular access to their property along this track. The Trustees agent made contact once again in December 2014 outside the pre order consultation period.

It should be noted that this section of route is being used as a Bridleway. If authority is given for an order to be made this would safeguard the use that is being made of this section of track currently recorded as a footpath which then continues as a Public Bridleway.



## Evidence provided by the Applicant

### User Evidence Forms

20 User Evidence Forms were submitted with the application from persons who claimed to have used the entire route over this land including the section marked on the attached plan A – B. The use that was made was that of riding a horse for pleasure. 19 of these were completed between October 1994 and January 1995, the other one dated October 1997. All of these users have stated that their primary way of travelling these routes was on horseback.

Information that is considered relevant has been taken from these forms and is detailed in the documents attached as **Document 1 and 2**.

As can be seen from these documents the earliest use dates back to 1933. These forms cover the period up to 1994 when they were submitted however we know that the route has continued to be used until the present day. The use that has been made of the route A-B is claimed to have been on horseback. All but one of the user evidence forms submitted have attached a plan.

From the information obtained from the user evidence forms, below is a brief outline of their content.

- 10 people have stated that they have used the routes for a period of 20 years or more.
- The frequency of use ranges from twice a week to 100 times a year.
- One person claims to have used this route between the years 1933 and 1945, three persons between 1945 and 1955, four persons between 1955 and 1960, five persons between 1960 and 1965, nine persons between 1965 and 1970, 15 persons between 1970 and 1980, 16 persons between 1980 and 1985 and 14 persons between 1985 and 1994.
- As can be seen from these forms all of these persons recall the existence of stiles and gates which were present on the land.
- Some do recall obstructions to the route, namely blocked gate, electric fencing, however claim that they were not in existence for long.
- None of these users recall the existence of notices restricting access.
- Two of these users regarded themselves as having been given permission as the farmer acknowledged them when seen or requested the use of an alternative route
- Not one person recalls being told these were private rights.

### Conclusion

As previously explained the majority of this claim has already been resolved through the dedication of bridleways across this land at Failand Farm. Nothing within these user evidence forms casts doubt that the route A – B was a continuation of those bridleways and had not been available for use.

Evidence obtained from the User Evidence Forms clarifies that around 1994 the gate at Tanpit Lane was obstructed with imbedded scaffolding poles and the gateway from Oxhouse Lane was heavily wired plus a huge log rolled in front of the gate. Although these were removed this date seems to be what caused this application to be submitted therefore

this date should be regarded as the date of challenge. The use of this track has been available for use since 1994 and no documentation has been found to imply that any attempt has been made to stop users.

## **Date of Challenge**

As previously mentioned this application was submitted on 25 October 1994. Information obtained from the user evidence forms has provided the date of challenge as being in 1994.

For public rights to have been acquired under Section 31 of the Highways Act 1980, a twenty year period must be identified prior to an event which brings those rights into question.

For a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. It is necessary to show either that the landowner accepted the use that was being made of the route or for the use to be so great that the landowners must have known and taken no action. A deemed dedication may be inferred from a landowners' inaction. In prescribing the nature of the use required for an inference of dedication to be drawn, the same principles were applied as in the case of a claim that a private right of way had been dedicated; namely the use had been without force, without secrecy and without permission.

Therefore taking 1994 as the date of challenge it is necessary to look at the period 1974 – 1994. During that period five persons have used the route A – B for 20 years; eight persons have used the route for periods between 10 and 20 years. In addition to this it is known that bridleway users are continuing to use this route today.

No evidence has been found or provided to show that the Trustees took any action to stop use of the section A – B by the users, in fact the letter dated 28 May 1999 confirms that they had no objection to it being a Bridleway.

Having evaluated this evidence it is felt that this is sufficient evidence to raise the presumption of dedication as a Bridleway.

## Historical Records

### Day and Masters 1782

This was a map of Somerset County surveyed and drafted by a competent professional which was acclaimed at the time of publication. Due to the requirement to enlarge the area in question this has affected the quality of this print, however a route is illustrated marked A – B on **Document 3** which is believed to be the route in question. This plan does not help with determining status however does illustrate that it existed at this time.

### Greenwood 1822

These maps were produced following a survey in 1820/21 and published in 1822. The highway structure laid out on this plan is depicted differently on this map however it is believed that the claimed route is illustrated between A – B on **Document 4**. Once again this plan does not assist with determining status but again shows that some form of track was on the ground.

## Epochs

Historical Maps Data is available for five different time periods, referred to as epochs. These epochs roughly equate to the first County Series survey and subsequent revisions, and the first National Grid resurvey and subsequent resurveys. Not all areas will have mapping available for each epoch, as the number of revisions for each county varies.

### Epoch 1 OS Mapping 1843 - 1893

This plan shows the track marked A – B on **Document 5** quite clearly bounded on both sides and leading into Ox House Bottom woodland area.

Although an early plan, it does have depicted upon it tracks across the fields marked as FP. One such route commencing in the south proceeds in a northerly direction towards the track, it then continues on to Funny Row (now known as Ferney Row). The track has also been given a parcel number of 292 as have other routes in the area. This plan does not assist with determining status however does illustrate its existence at the time of production.

### Ordnance Survey Plan 1884

This plan was used as the base map for the 1930 Road Records. The track in question marked A – B on **Document 6** is clearly depicted as a route bounded on both sides which at that time gave a means of access to the woodland area. As with the Epoch plans above and below this plan illustrates the use of this route as a connector to other FP's.

### Epoch 2 OS Mapping 1891 - 1912

As with the plans above it shows the track marked A – B on **Document 7** quite clearly bounded on both sides and leading into Ox House Bottom woodland area.

Although an early plan, it does have depicted upon it tracks across the fields marked as FP. One such route commencing in the south proceeds in a northerly direction towards the track. The footpath then continues from the end of this track onto Funny Row (now known as Ferney Row). Once again this track has been given the number of 292, this time with the area of land specified.

## **Epoch 5 OS Mapping from 1945 onwards**

As with the plans above it shows the track marked A – B on **Document 8** quite clearly and does not seem to have changed. It should be noted that there are no footpaths shown on this plan and some of the field layouts have changed. This plan illustrates the property known as Keepers Cottage (then called Ox House Bungalow) has been built. Once again the track has been identified by numbering however this time it is 8667.

## **Definitive Map**

The Definitive Map which carries a relevant date of 26 November 1956 shows the full route of LA20/63 leaving Oxhouse Lane below an area known as Ox House Bottom passing through an area known as Ferney Row before joining LA20/62 at Failand Farm. At the time of the production of the Definitive Map the recorded status of these route were footpaths which as previously explained were rededicated by the landowner as Bridleways. The section the subject of this report is shown as A – B on **Document 9**.

All of the plans illustrated above clearly show that a route has been available on the ground capable of being a Bridleway since 1884.

## Consultation and Landowner Responses

A consultation letter was sent on the 27 August 2014 to Statutory Undertakers, The agent for the Trustees, the owner of Keepers Cottage, User Groups and Interested parties requesting that comment be received by the 10 November 2014. Responses were received from the following parties:

Western Power Distribution – 3/9/2014 - No objection to the proposal

Wraxall and Failand Parish Council – 15/09/2014 - Very supportive of NSC's action to make it definitive

Ms M Dodder – Landowner – 20/10/2014 - Concerns regarding condition and future maintenance – **further detail below**

Bond Dickenson – Agent for trustees – 23/12/2014 – Response to previously requested questions relating to rights and liabilities of ownership - **further detail below**

### Landowner Responses

#### Ms M Dodder

Ms M Dodder owns the property known as Keepers Cottage which has a right of vehicular access along this track. The basis of their concern is as follows:

- It is essential that the lane be surface or maintained.
- The lane is just a mud path so unfortunately horses do create massive pot holes down the lane which is a real big problem as this is the only access to our house.
- It also makes walking up the footpath impossible for walkers.
- I request that these issues be addressed before considering making it a public bridle way, I have enclosed photos to show the lane is not fit for purpose.
- The lane was so difficult to pass up this year that it recently had to be scraped to allow access to our home so I am really worried that it will be destroyed again quickly.
- As it is just mud it gets in a bad state with regular horse use.
- No one seems responsible for looking after the lane.
- Who had made the application?
- Who is responsible for maintaining the lane if it where to be made a public bridle way?

Unfortunately attempts to contact Ms Dodder have failed so that this matter could be discussed. Further attempts will be undertaken.

#### Bond Dickenson acting for the Trustees

As previously stated every effort has been made to try to reach agreement with the owners of the land to address this matter. Correspondence has been passing between the agent for the Trustees and North Somerset Council since March 2007

In June 2011 a draft creation agreement was forwarded to Mr R Drewitt, at Osbourne Clarke for approval, together with an offer to pay the Trustees reasonable legal expenses associated with processing this matter if agreement was reached. A response was received in August 2011 questioning whether it was necessary to proceed by way of Public

Path Creation Agreement and suggesting a Permissive Path Agreement instead. The Trustees felt that this process would give them some reassurance as landowners that they were not irrevocably signing away their rights. A response was sent explaining that the landowners would not be giving ownership of this land away by signing a Creation Agreement.

On the 7 August 2012 I was advised that this matter had been passed to Ms J Cowley, a colleague of Mr Drewitt's. On the 8 April 2013 an email was received advising that the owners of the land would like to offer to transfer the strip of roadway to the local authority, only seeking payment of their solicitor's costs in the region of £1500 plus VAT and disbursements.

This proposal was passed to our Estates Officer for comment who advised that further clarification be sought on the following:

- What rights/liabilities exist in respect of the access along the route that seems to serve the property known as Keepers Cottage
- If that property has legal rights of access along the route with a legal document. We would need to see that document to establish the extent of those rights and what liabilities if any rest with the freeholder.
- As this route is bounded on both sides by trees hedges etc are these the responsibility of the adjacent landowners or the owner of the track.
- Could you provide a plan showing the full extent of land which your clients are prepared to transfer to the Council?

Once again the trail went cold and no further correspondence was received from Osborne Clark. It was eventually discovered that Ms Cowley had moved to Bond Dickenson and that the account relating to Trustees had also transferred. A further attempt was made to get this matter moving in July 2014 when Ms Cowley was advised that unless contact was made by the end of July that informal consultation would commence as required by the Definitive Map Modification Order process. An acknowledgement was received on 16 July 2014 by email advising that the electronic files had been requested from Osborne Clarke and that she hoped to receive this fairly quickly and would then respond properly. Nothing further was received therefore Informal Consultations were commenced.

The last correspondence received from Bond Dickenson was by email on the 23 December 2014. The information within this related to the questions asked above by our Estates Officer. The response received is as follows:

- *I am not aware of any specific rights and liabilities. In the absence of any documented rights I am sure that a right will have been created through long established use.*
- *See above response.*
- *I have no specific knowledge but the Trustees will not have carried out any active hedge or tree maintenance for some years.*
- *This will need to encompass all of the residual freehold ownership*
- *With reference to point 4 above, I can produce a plan should the Council wish to proceed with the transfer of the roadway to them. Could you please therefore let me know how you wish to proceed, bearing in mind the contents of your letter dated 27 August 2014.*

This response has been forwarded to our Estates Officer who has confirmed that the answers provide no information relating to the rights or responsibilities attached to this land

and therefore no benefit can be seen to accepting ownership. Therefore it is felt that this matter should continue to follow the Definitive Map Modification Order process.

The agent has been advised that this matter is being presented to this Committee with a view of seeking authority to make an Order.

## Summary of Evidence and Conclusion

### Summary of Landowner Evidence

Although no evidence has been submitted by either the Trustees or Mr Simons of Failand Farm the fact that at the time of the submission both parties put in writing their agreement to the route being dedicated as a Bridleway, this should be regarded as good evidence of acceptance of the use being made of the route.

### Summary of User Evidence

Taking into consideration all of the information that has been collated from user evidence forms and detailed in Appendix 3 the users did not appear to be confused as to the routes that they were claiming to have used. Usage of these routes was claimed between 1933 and present day although as previously stated the date of challenge being 1994.

No evidence has been submitted to show that the landowner has ever objected to horseriders using this route, no evidence of signage forbidding use or confrontation with users. Detail has been provided of landowners requesting that users deviate from the route when cattle in the field or trees had fallen through storms. Only favourable comments have been submitted regarding the acknowledgement given by the landowner when met on these paths, no one having been challenged regarding use. The owner of Keepers Cottage has made reference to the current use by horses which they believe has damaged the surface of the track.

These User evidence forms have illustrated that these users have used this route as of right, without force, without secrecy or permission.

### Summary of Documentary Evidence

Limited documentary evidence has been looked at in this case primarily because the route is still in use. The mapping which has been looked at suggests that a route has been available since 1782 capable of being used as a bridleway.

### Conclusion

The legal test to be applied to this application is that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

Documentary Evidence above has shown that a route capable of being used has existed since 1782. This has been supported by the submission of 20 user evidence forms claiming to have used this route without challenge or long lasting obstruction.

Based on all of the information contained within this report it is considered that the relevant legal test has been met and that the user evidence covering the 20 year period between 1974 and 1994 raises a presumption of dedication under S31 HA 1980.

In addition to this these routes appear to have been used without force, without secrecy and without permission. No evidence has been produced to show that previous owners erected



notice, took action to stop use or verbally objected to the public use. Therefore dedication under Common Law may be inferred from the landowner's inaction.

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order.
3. If option 1 has been recommended it is necessary to establish whether the Committee wish to support the Order and if objections are received and forwarded to the Secretary of State that the Council will support the Order through its determination; or
4. To establish whether the Committee wish the Council to be a neutral party, neither opposing or supporting the making of this Order and thereby continue to be a neutral party through its determination; and
5. To seek the Committee's authority to confirm the Order if no representations or objections are received.

**PUBLIC RIGHT OF WAY EVIDENCE FORM  
SUMMARY OF DETAIL CONTAINED  
MODIFICATION CLAIM RELATING TO LA20/63 CLAIMED BRIDLEWAY**

Name on User Evidence Form	E1 Mrs Hyde Andrews	E2 Mrs C Brown	E3 Mrs L Colley	E4 Mrs E Durie	E5 Mr JM Durie	E6 Mrs M C Evans	E7 Mrs E Hawkesford	E8 Mrs DJ Heywood
Believed status of routes	Bridleway	Bridleway	Bridleway	Bridleway/Byway	Bridleway	Bridleway	Bridleway	Bridleway
Used the routes	1975 – 1997 <b>(22)</b>	1944 – 1990 <b>(46)</b>	1982 – 1994 <b>(12)</b>	1981 – 1994 <b>(13)</b>	1981 – 1994 <b>(13)</b>	1981 – 1994 <b>(13)</b>	1970 – 1994 <b>(24)</b>	1979 – 1994 <b>(15)</b>
Reason	Circular route	Exercising horse	Pleasure	Pleasure	Pleasure	Pleasure	Riding into Ashton Court	Pleasure, gets off main rd
Frequency Per Year Weekly Daily	104 per yr	Most weekends	40 per yr	Yes	Yes	50-60 per yr	200 per yr	4 per week
Method of travel	Horseback	Horseback	Horseback and foot	Horseback,	Horseback	Horseback	Horseback	Horseback
Any obstructions								
Stiles Gates	No Yes	No Yes	No Yes	No Yes	No Yes	No Yes	No Yes	No Yes
Working for landowner	No	No	No	No	No	No	No	No
Ever stopped or turned back	No	No	No	No	No	No	No	No
Ever told by anyone that way was not public	No	No	No	No	No	No	No	No
Ever known any locked gates	Pt B Boundary gate obstructed	No	No	No	No	No	No	No
Any Notices	No	No	No	No	No	No	No	No
Given permission	Yes see below	No	No	No	No	No	No	No
Private right to use	No	No	No	No	No	No	No	No
Other information	Owner of Failand Farm asked riders to go around barn rather than through yard. Gate at Tanpit Lane obstructed 1994		Used to ride through farm yard and was always made to feel welcome. Recalled existence of electric fence blocking fields.	Route blocked by fallen tree following gales.	Route blocked by fallen tree following gales.	Whenever been walking or riding the farmer was always polite and helpful. Resident in Ferney Row often opened the gate when riding through.	Sometimes if farmyard was busy I used alternative farm gate. This has always been a well used bridleway particularly safe for children.	Sometimes when cattle were in farmyard asked to divert through a field. Beautiful ride through open fields. Seen other riders.
Routes used	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B

**PUBLIC RIGHT OF WAY EVIDENCE FORM  
SUMMARY OF DETAIL CONTAINED  
MODIFICATION CLAIM RELATING TO LA20/63 CLAIMED BRIDLEWAY**

Name on User Evidence Form	E9 Ms N J Heywood	E10 Mr V Leadbetter	E11 Mrs H Lindsay	E12 Mrs B Parker	E13 Mrs J Smith	E14 Mr D Tucker	E15 Mrs S Tucker	E16 Miss V Tucker	E17 Mr C Ware
Believed status of routes	Bridleway	Bridleway + Footpath	Bridleway	Bridleway	Bridleway		Bridleway	Bridleway	Bridleway
Used the routes	1978 – 1994 <b>(16)</b>	1968 – 1976 <b>(8)</b>	1970 – 1993 <b>(23)</b>	1944 – 1950 <b>(6)</b>	1933 – 1974 <b>(41)</b>	1960 -	1957 – 1980 <b>(23)</b>	1973 – 1981 <b>(8)</b>	1967 – 1994 <b>(27)</b>
Reason	Pleasure, Exercise	Pleasure	Pleasure riding off road	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure	Horseriding
Frequency Per Year Weekly Daily	4 per week	24 per yrs	96 per yr	24 per year	2 per week		100 per yr		200 per yr
Method of travel	Horseback	Horseback + Foot	Horseback	Horseback	Horseback	Foot, Horseback	Horseback	Horseback	Horseback
Any obstructions									
Stiles Gates	No Yes	No Yes	No Yes	No Yes	No Yes	No Yes	No Yes	No Yes	
Working for landowner	No	No	No	No	No	No	No	No	No
Ever stopped or turned back	No	No	Yes	No	No	No	No	No	No
Ever told by anyone that way was not public	No	No	No	No	No	No	No	No	No
Ever known any locked gates	Yes	No	Yes	No	No	No	No	No	No
Any Notices	No	No	No	No	No	No	No	No	No
Given permission	No	No	Yes	No	No	No	No	No	No
Private right to use	No	No	No	No	No	No	No	No	No
Other information	Occasional electric fence when farmer gradually grazing field in spring meant had to make detours. Only happened for short periods.	Informed by others that the way was a bridleway and this was accepted by the farmer	Route blocked in storms of 1986 turned back whilst route cleared. Permission presumed as acknowledged by farmers when seen	This was a popular ride					
Routes used	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B	All routes claimed including A - B

**PUBLIC RIGHT OF WAY EVIDENCE FORM  
SUMMARY OF DETAIL CONTAINED  
MODIFICATION CLAIM RELATING TO LA20/63 CLAIMED BRIDLEWAY**

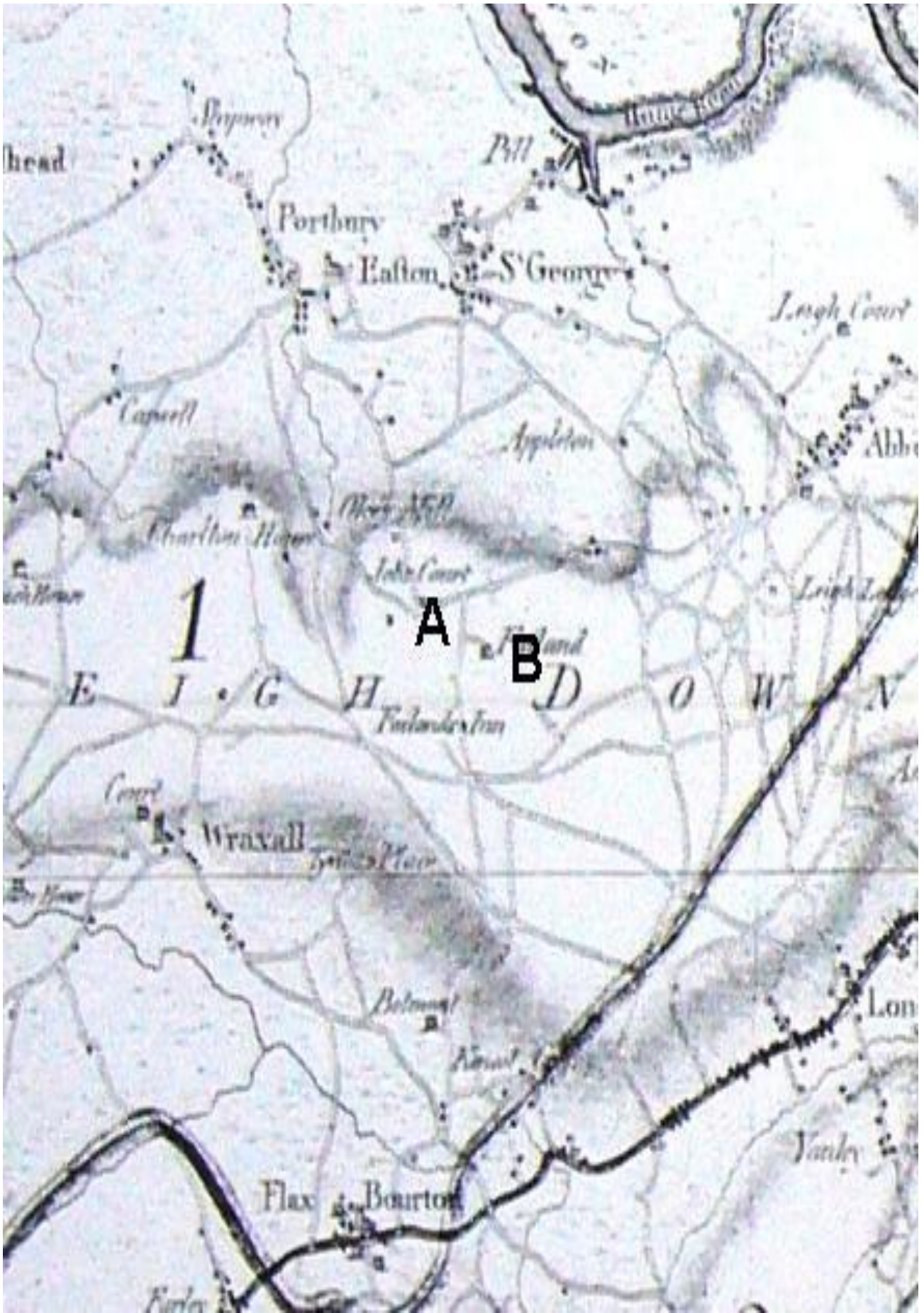
Name on User Evidence Form	E18 Ms M Ware	E19 Mr PJW Ware	E11 Mrs F P Webbed
Believed status of routes	Bridleway	Bridleway	Bridleway
Used the routes	1966 – 1994 <b>(28)</b>	1968 – 1976 <b>(8)</b>	1955 – 1994 <b>(39)</b>
Reason	Pleasure riding off road	Pleasure riding off road	Hacking and exercise
Frequency Per Year Weekly Daily	200 per yr	50 per yrs	4 per week
Method of travel	Horseback	Horseback	Horseback
Any obstructions			
Stiles Gates	No Yes	No Yes	No Yes
Working for landowner	No	No	No
Ever stopped or turned back	No	No	Yes
Ever told by anyone that way was not public	No	No	No
Ever known any locked gates	No	No	Yes
Any Notices	No	No	No
Given permission	No	No	
Private right to use	No	No	No
Other information	Have used this bridleway with family both when lived in the area and since moving to Abbots Leigh.	A well used route by families leading children on reins on ponies.	Occasional use of electric fencing, switched off if asked. Farmer advised he would not stop horseriders using routes.
Routes used	No plan supplied	All routes claimed including A - B	All routes claimed including A - B



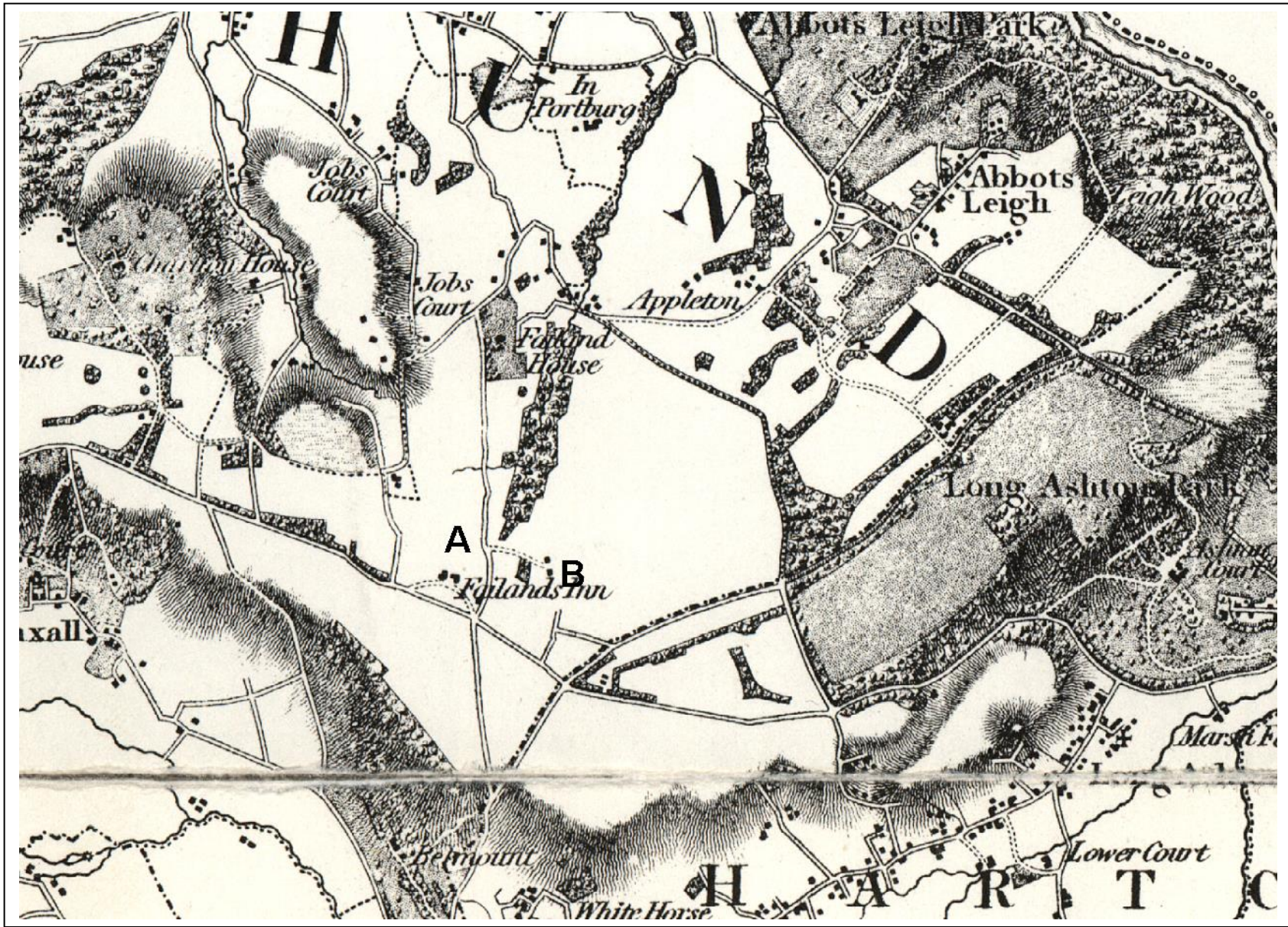
**PUBLIC RIGHT OF WAY EVIDENCE FORM  
CLAIMED USE OF PATH  
MODIFICATION CLAIM RELATING TO LA20/63 CLAIMED BRIDLEWAY**

		From	To	1920	1925	1930	1935	1940	1945	1950	1955	1960	1965	1970	1975	1980	1985	1990	1995	2000	2005	2010			
1	Mrs Hyde Andrews	1975	1997											22 YEARS											
2	Mrs C Brown	1944	1990						46 YEARS																
3	Mrs L Colley	1982	1994													12 YEARS									
4	Mrs E Durie	1981	1994													13 YEARS									
5	Mr J M Durie	1981	1994													13 YEARS									
6	Mrs M C Evans	1981	1994													13 YEARS									
7	Mrs E Hawkesford	1970	1994											24 YEARS											
8	Mrs DJ Heywood	1979	1994													15 YEARS									
9	Mrs NJ Heywood	1978	1994													16 YEARS									
10	Mr V Leadbetter	1968	1976										8 YEARS												
11	Mrs H Lindsay	1970	1993											23 YEARS											
12	Mrs B Parker	1944	1950						6 YEARS																
13	Mrs J Smith	1933	1974			41 YEARS																			
14	Mr D Tucker	1960	1994										34 YEARS												
15	Mrs S Tucker	1957	1980								23 YEARS														
16	Miss V Tucker	1973	1981										8 YEARS												
17	Mr C Ware	1967	1994										27 YEARS												
18	Ms M Ware	1966	1994										28 YEARS												
19	Mr P Ware	1968	1976										8 YEARS												
20	Mrs F Webber	1955	1994								39 YEARS														



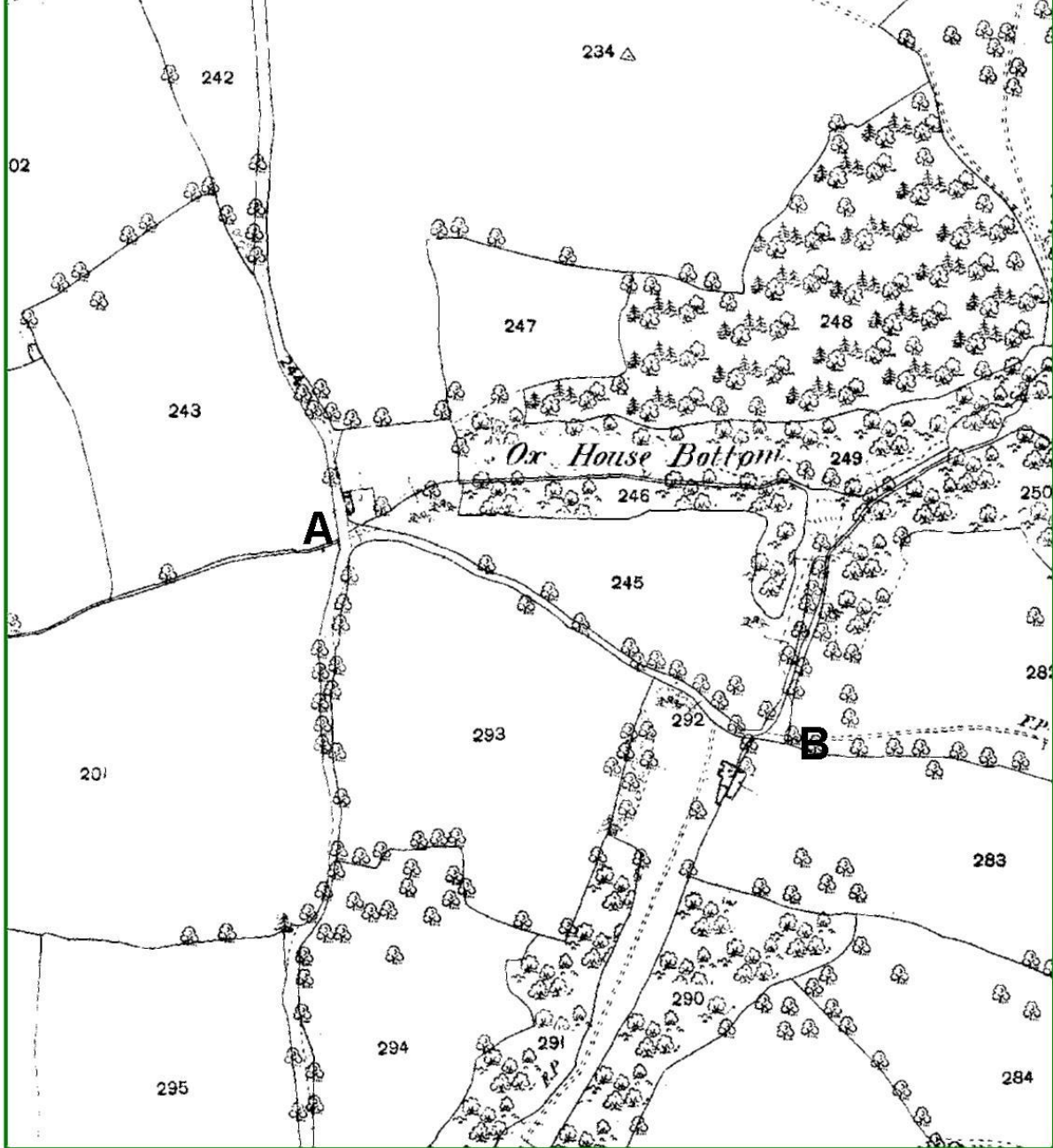








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**Development & Environment**

Public Rights of Way  
 Streets and Open Spaces  
 North Somerset Council  
 Town Hall  
 Walliscote Grove Road  
 Weston-super-Mare  
 BS23 1UJ

Tel: 01834 888 802

**Project**

**Epoch 1 OS Mapping 1843 - 93**

**Location**

**Oxhouse Lane Failand**

**Client**

**OS Licence No.**

**100023397**

**NORTH**

**Scale 1:3000**

**Drawn by**

**E Bowman**

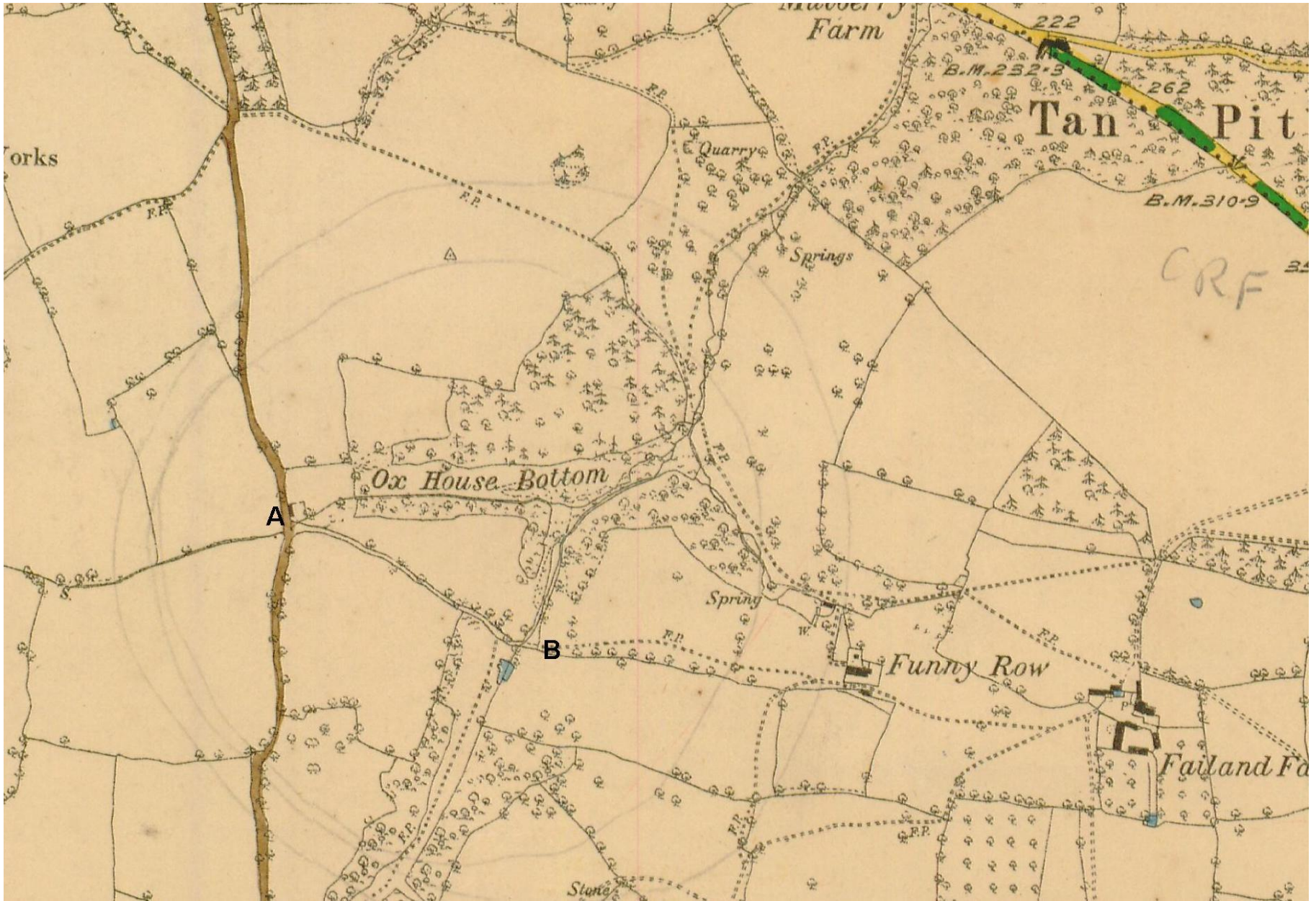
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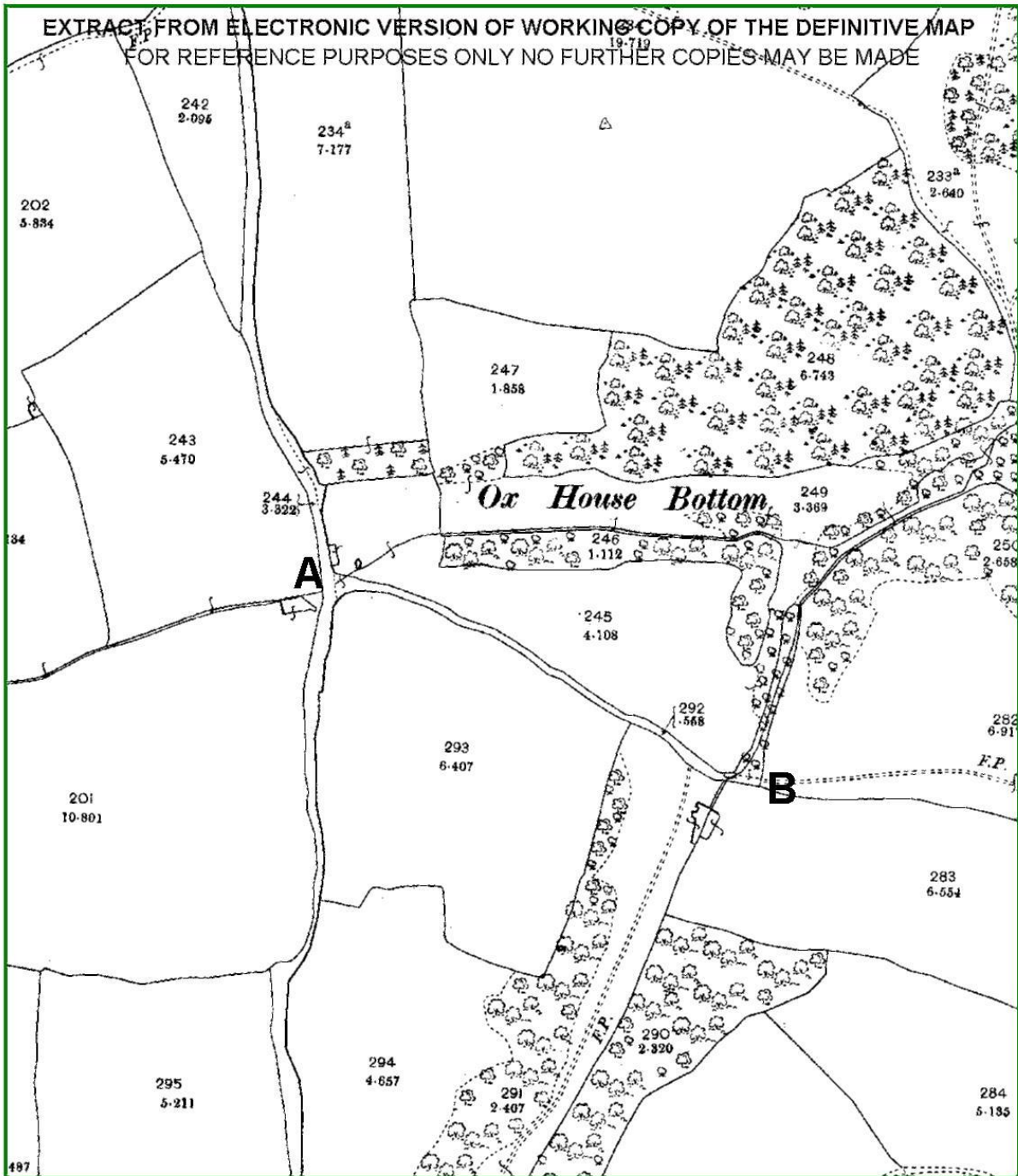
**Date**

**18 February 2015**

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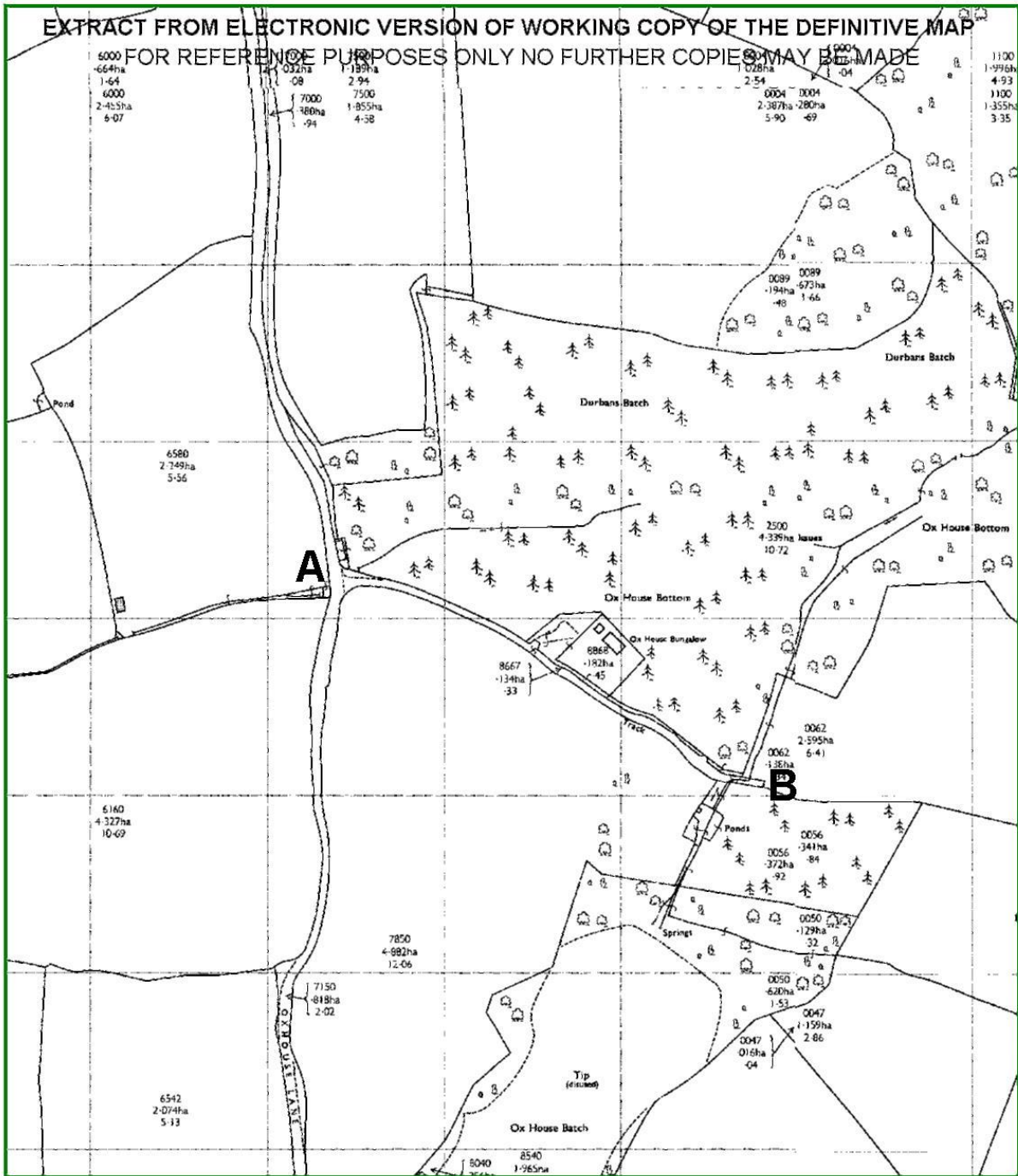


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	<p><b>Location</b> Oxhouse Lane Failand</p>	<p><b>Client</b></p>	<p><b>Drawn by</b> E Bowman</p>
	<p><b>OS Licence No.</b> 100023397</p>	<p><b>Date</b> 18 February 2015</p>	<p><b>Drawing No.</b></p>

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**DOCUMENT 8**  
**1945 EPOCH 5 NAT GRID SURVEY**

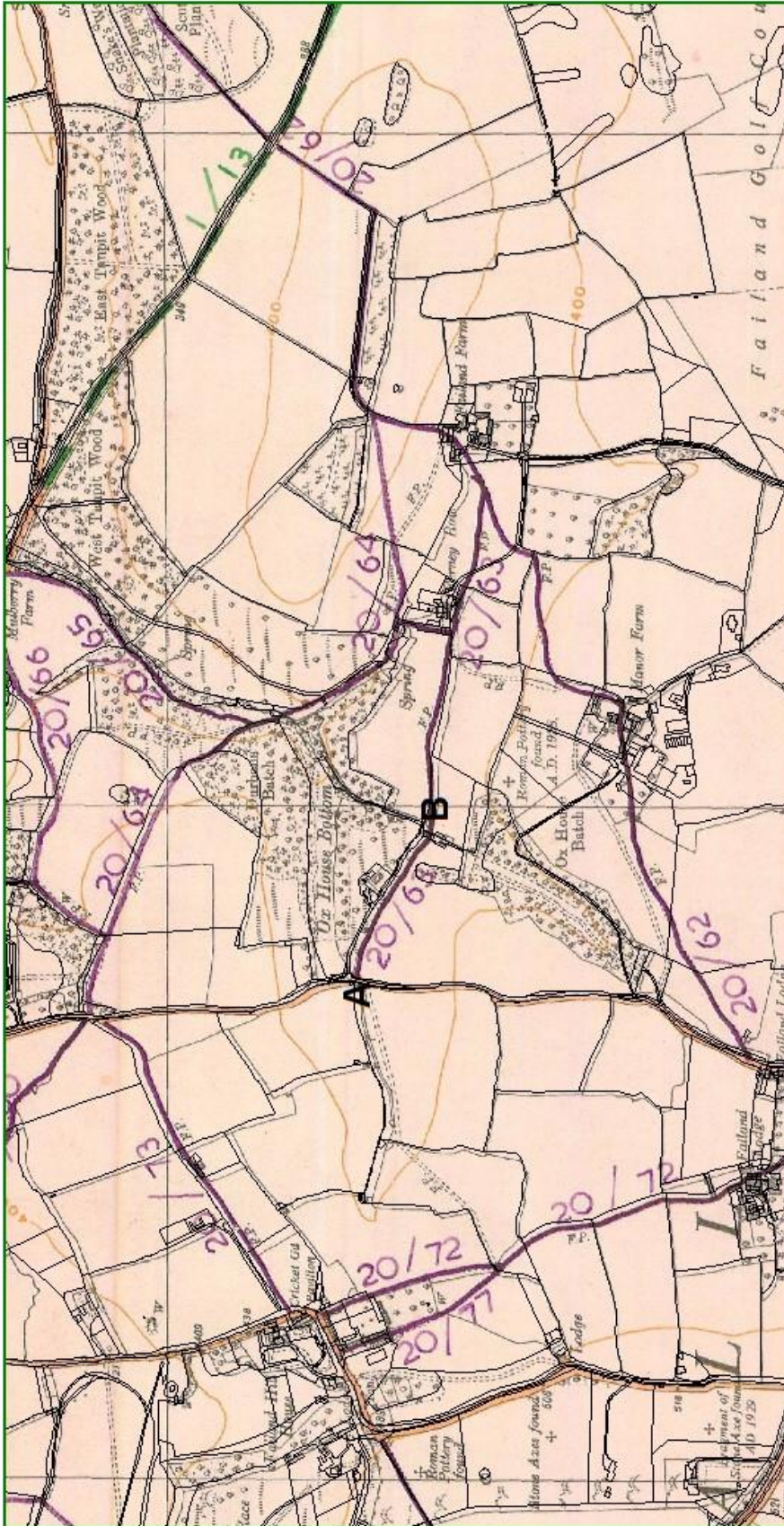


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 <p><b>North Somerset COUNCIL</b></p> <p>Tel: 01834 888 802</p>	<p><b>Development &amp; Environment</b></p> <p>Public Rights of Way Streets and Open Spaces North Somerset Council Town Hall Walliscote Grove Road Weston-super-Mare BS23 1UJ</p>	<p><b>Project</b> Epoch 5 OS Mapping from 1945 onwards</p> <p><b>Location</b> Oxhouse Lane Failand</p> <p><b>Client</b></p>	<p><b>OS Licence No.</b> 100023397</p>	<p><b>NORTH</b> Scale 1:3000</p> <p><b>Drawn by</b> E Bowman</p> <p><b>Drawing No.</b></p>	
				<p><b>Date</b> 18 February 2015</p>	

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	<b>Development &amp; Environment</b> Public Rights of Way Streets and Open Spaces North Somerset Council Town Hall Walliscote Grove Road Weston-super-Mare BS23 1UJ Tel: 01934 888 802	<b>Project</b> Committee Report	 Scale 1:8295
	Drawn by <b>E Bowman</b>	<b>Location</b> Oxhouse Lane Failand	Drawing No. <b>EB/Mod 15 Def Map</b>
	<b>Client</b> OS Licence No. <b>100023397</b>		

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