

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 15 NOVEMBER 2016

SUBJECT OF REPORT: MOD 20 CLAIMED BRIDLEWAY AT WRINGTON WOODS

TOWN OR PARISH: CONGRESBURY

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise the relevant officer to reject this application relating to Mod 20 on the grounds that there is insufficient evidence to support the making of an Order.

1. SUMMARY OF REPORT

Footpath AX 16/31 was the subject of investigation following the submission of an application dated 19 July 1989. That application claimed that Footpath AX16/31 should be recorded as a Bridleway. Following the normal statutory procedure it was determined by an Inspector appointed by the Secretary of State at a Public Inquiry on the 23rd to 26th May 1995. That Inspector's decision was that the Order should not be confirmed.

A second application was submitted to Avon County Council on the 25 February 1996 claiming that additional evidence had been found which proved that this route should be recorded as a Bridleway. The applicants claim that the previous Inspectors interpretation of the evidence and final decision was inaccurate, however did not choose to challenge that decision within the High Court.

This report is to consider the new evidence, in conjunction with the evidence previously considered to ascertain whether Footpath AX 16/31 should be recorded as a Bridleway,

Such application for a Definitive Map Modification Order is submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of this request, should an Order be made and confirmed, would be to amend the Definitive Map and Statement for the area. The application relates to the route A – B commencing on Wrington Road in Congresbury and proceeding through areas known as Urchin Wood, Ball Wood and Corporation Wood before exiting on Cleeve Hill Road.

This report is based on historical documentary evidence and user evidence. A Plan, EB/Mod 20, showing the route being claimed is attached.

The current route of Footpath AX16/31 commences on Wrington Road on the driveway to a property called The Woodlands and proceeds in a north easterly direction for a distance of approximately 170 metres where it then continues in a south easterly direction for approximately 100 metres, it then turns in a north easterly direction for approximately 250 metres, then north north easterly direction for approximately 600 metres, then easterly direction passing the property called Woolers for approximately 830 metres before continuing in a north easterly direction for approximately 510 metres to the property called Corporation Cottage and turning in a northerly direction for approximately 70 metres to meet the Cleeve Hill Road. A total distance of approximately 2530 metres.

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. Also listed below are the Documents that are attached to this report. 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 20

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the First Claim

Appendix 3 – History and Description of the Second Claim

Appendix 4 - Analysis of the Documentary Evidence submitted by the Applicant

Appendix 5 - User Evidence

Appendix 6 - Consultation and Landowner Responses

Appendix 7 - Summary of Evidence and Conclusion

Appendix 8 – Committee report dated 21 November 1990

Appendix 9 – Committee report dated 27 July 1993

Appendix 10 – The Planning Inspectorate Decision dated 10 August 1995

Appendix 11 – Applicants submitted Documents Nos 1 – 14

Appendix 12 – Applicants submitted Documents Nos 15 - 16

Appendix 13 – Extract from Earth Colours on Ochre Mining

Appendix 14 – Representation from Michelmore Acting for Mr & Mrs Kingston

Appendix 15 – Further submission from Woodspring Bridleways Association.

2. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan “Health and Wellbeing” and “Quality Places”.

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

As this report relates to a route A-B which is currently recorded on the Definitive Map as a Footpath it is necessary for the Committee to consider whether, given the evidence available, 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 the relevant test has been adequately met, it should determine that a Definitive Map Modification Order should be made. If not, the determination should be that no order should be made. See Appendix 1.

4. CONSULTATION

Although North Somerset Council is not required to carry out consultations at this stage affected landowners have been contacted. In addition to this Congresbury Parish Council, Local members, interested parties and relevant user groups have also been included. Detail of the correspondence that has been received following these consultations is detailed in **Appendix 6**.

5. FINANCIAL IMPLICATIONS

At present the council is required to assess the information available to it to determine whether there is sufficient evidence to support the application. There will be no financial implications during this process. Once that investigation has been undertaken, 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 the Council decided not to make an Order) and issue a direction 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

Therefore having regard for all of the documents contained within this report it is necessary to consider the following options available to the Committee:

1. Whether the evidence as a whole supports the making of a Definitive Map Modification Order for the route A-B.
2. Whether this application should be denied as there is insufficient evidence to support the making of an Order.

AUTHOR

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BACKGROUND PAPERS: - Public Rights of Way File Mod 20

The Legal Basis for Deciding the Claim

1. The application has been made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and then keep the Definitive Map and Statement up to date, 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 the Bridleway 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 First Claim

APPLICATION 1 – 19 July 1989

Application submitted by Mrs V Craggs on behalf of Woodspring Bridleways	The basis of this application was that two routes, AX16/31 and AX16/33 had been incorrectly recorded during the Definitive Map process and should be recorded as Bridleway.
Report presented to the Planning, Highway and Transport (Public Rights of Way) (Policy Implementation) Sub Committee on the 21 November 1990	A report was prepared and presented. Members were advised that this application was supported by 35 User Evidence Forms and letters of evidence. Information was also presented regarding responses that had been received to informal consultations. The majority of these objected to the proposal for AX16/31 to be recorded as a Bridleway. The officer recommendation at that time was <i>“that authorisation be given to prepare and seal an Order to modify the Definitive Map and Statement by including Definitive Footpath AX16/31 (Route “ABC”) and Route “BD” as bridleways, and if no objections are sustained, to confirm the Order”</i> . This report is attached as Appendix 8.
Definitive Map Modification Order Made	The Order was made on the 23 March 1993, advertised on 31 March 1993 with an objection period to the 17 May 1993
Report presented to the Planning, Highways and Transport (Public Rights of Way) Sub Committee dated 27 July 1993	A second report was presented which advised members that the Order had been made and attracted 27 letters of objection, 10 letters of support and 2 letters of comment. The members in determining what action to take in regard to the application resolved “that the Order be referred to the Secretary of State for the Environment, with a request for confirmation”. It is stated within the minutes for that meeting that the recommendation should have read “that the Order be referred to the Secretary of State for the Environment with a request that he <u>does not</u> confirm the Order”. However the minutes advise that having given the matter further consideration, it was resolved that the Order be referred to the Secretary of State for the Environment, with a request for confirmation. This report is attached as Appendix 9.
Public Inquiry held on 23 May 1995	A Public Inquiry was held commencing on 23 May 1995 which lasted for 4 days. During that time an appointed Inspector listened to all of the evidence put forward by Avon Council, the supporters for the Order and also the objectors, including landowners. It should be remembered that at this Inquiry the Inspector was considering a number of routes, not just AX16/31. In regard to this report the relevant evidence from the Inquiry will be that which is referred to as A-B-C. A copy of the Inspectors Report is attached as Appendix 10.

Inspectors Decision Notice

Avon County Councils Case

32 User Evidence Forms [para.11 - 15].

It was claimed that this information showed that use had been made of this route between 1935 to 1989, challenges that had been made to the use, the existence of signage and reported locked gates on the routes. The use that was being claimed was based on presumed dedication under Section 31 of the Highways Act 1980 (Appendix 1 section 4)

Map and Documentary evidence [para. 16]

1736 Survey map, 1782 Day and Masters, 1817 Mudge Map, 1822 Greenwood, 1840 Tithe Map of Congresbury and 1903 OS map. It would appear that not a lot of information was gained from these plans.

Definitive Map process was then presented [para.17]

This illustrated that the records regarding the preparation are sketchy but that some records have survived and were taken into consideration namely the Parish Record Cards, Draft Survey Map, letter dated 27 October 1954, Draft Provisional and Definitive Map. There were no recorded objections that these routes were recorded as Footpaths

Letters dated between 25 April 1952 to 1958 from Mr Harvey and Bristol Municipal Charities

Mr Harvey and Bristol Municipal Charities were owners of the land at the time. Both these landowners seem to describe the route of AX16/31 running from Corporation Cottage on the Cleeve/Wrington Road to road near "Woodlands" and declaring that they believe this route to be a 'bridlepath' as well as a footpath.

27 letters of objection [para.19]

Authority was given for an Order to be made, which attracted objection when published. The County Solicitor advised members of the Committee that the objections were duly made, were persuasive and challenged the basis of the Order, i.e. the 20 year rule. Despite this advice the Committee resolved that the Order was referred to the Secretary of State for confirmation

Witnesses present at Inquiry (para. 20.1 – 20.8)

13 parties gave evidence to the Inspector in support of the application detailing their understanding and recollections of using these routes. Of those eight had completed User Evidence Forms which was given to the Inspector for assistance

Date of Challenge [para.21.1 – 21.5]

The application was submitted in 1989, implying that it was around this time that an event occurred which challenged any public use that was being made, this is referred to as 'calling the route into question'. An analysis was undertaken of the public use to establish whether there was evidence of 20 years uninterrupted use. The information contained within these paragraphs details information given to the Inspector by those who attended the Inquiry

Other comments received to the Order [para.22.1 – 22.3

The evidence submitted to Avon County Council seemed to show that there was considerable conflict between evidence given by walkers and the riders. Many objectors completed statutory declarations refuting the use claimed by the riders. Parish Council records relating to the Definitive Map Process were not complete nor were there any records confirming what information was sent to Somerset County Council in its preparation of the Definitive Map.

Avon County Councils Opinion [para. 22.4] and [para.23.1]

Avon County Council considered that the riders had established 20 years of uninterrupted enjoyment of the path as of right, without permission. It was felt that the letters from the landowners referring to the route as a bridleway should be regarded as strong evidence of presumed dedication. Therefore on the balance of the evidence available to them Avon County Council believed that public bridleways subsisted or were reasonably alleged to subsist over the paths in question.

Avon County Council were supported by eight further witnesses, one statutory declaration and 15 letters and the user evidence forms submitted.

The Case for the Objectors

Congresbury Parish Council [para. 24.1 – 24.16].

Brought to the Inspectors attention their understanding that the recommendation to the sub-committee in the report dated 27 July 1993 contained a typing error and that the word 'not' had been missed out. The sub-committee had been advised of this omission however, they chose to go against the advice of the County Solicitor and the Rights of Way Officer and resolved that the Order be submitted to the Secretary of State. A variety of documents and minutes were referred to by the Parish Council (presumably presented) relating to the preparation of the Definitive Map.

Mr O J Urch owner of the Woodlands submitted further evidence relating to his property [para. 25.1 – 25.3] [para. 25.4 – 25.8]

He presented a number of documents relating to his property, dating back to 1925. He wished to dispute statements made by Mr Harvey (a previous owner) that AX16/31 was a bridle path. He stated in the deeds to the property it was called a footpath. He advised when he bought this property there was a sign "Footpath to Woolers", this was erected by Congresbury Parish Council in 1969. He claimed that prior to this other signage saying 'No Horses' had been in existence nailed to various trees along the footpath.

Mr Urch informed the Inspector that since purchasing the property in 1975 he had erected signs, stopped users on horses and sought clarification on the official status of the route.

Mr Urch also organised a number of witnesses to appear at the inquiry and the production of further statutory

declarations in support of his case. These witnesses gave evidence on the use that they had enjoyed but also what they had observed

Mrs Powell [para. 26.1 – 26.2]

She bought the property Woolmers in 1974 and produced a letter from the previous owner Mr Barr who lived there between 1967 and 1974. This provided information relating to their means of access and the existence of a locked gate

Mr Ridley [para. 27.1]

Advised the Inspector that he had become the owner of Congresbury Woods in 1989, however had had knowledge of them since 1952-3 including the existence of barriers, stiles and cattle grid

Mr P Gillman [para 29.1 – 29.5].

He presented further evidence to the Inspector in the form of old historical documents. He owned land immediately east of footpath AX16/33 at the Ball Lane junction since 1976. He produced copies of the Tithe Map, Finance Act 1910 and further letters however it should be remembered that this information relates to both routes that were claimed at that time

Inspectors Comments and Conclusions

In summing up the objections to the Order the Inspector has stated that the user evidence is unconvincing whilst lack of intention to dedicate is consistent [para. 30.1 – 30.8].

In reaching his conclusion the Inspector has undertaken a full evaluation of the evidence that was presented to him [para.31 – 44]. This application was based wholly on user evidence.

Having regard for the letters from Mr Harvey and Colonel Towill, the Inspector felt that despite their claims of ancient rights along the route of AX16/31, it was not supported by the evidence and was immaterial unless:

1. *It is new evidence not known or taken into account by the committees responsible for formatting the Definitive Map and Statement.*
2. *The authorities responsible for compiling the Definitive Map and Statement behaved improperly or failed to carry out their statutory responsibilities.*

The Inspector, having analysed the evidence presented to him, felt that all procedures were correctly carried out and that Mr Harvey's and Colonel Towill's claims were properly examined.

For the reasons set out in his Decision Notice the Inspector felt that the Order failed on all counts and decided not to confirm the Order.

History and Description of the Second Claim

APPLICATION 2 – 25 February 1996

31. Woodspring Bridleways Association submitted a new application relating to Footpath AX16/31 dated 25 February 1996. They describe the route being from where it leaves the County Road known as Wrington Road to Cleeve Hill Road shown on the attached location plan marked A – B on Plan EB/Mod 20. This application was supported by claimed new evidence attached as Documents 1 to 12, a report by Woodspring Bridleways Association and a History of Public Rights of Way. They also confirmed that affected landowners had been advised of this new application. These documents are attached to this report as **Appendix 11 Docs 1 – 12 and 14**
32. Woodspring Bridleways Association believe that these documents represent New evidence which shows that the owners of land crossed by AX16/31 had agreed as far back as 1925 that the route was a public bridleway and that Congresbury Parish Council acted in error when it put this route on the Definitive Map as a footpath and not a bridleway. The documents attached to this new application consisted of the following, the emphasis placed upon them by Woodspring Bridleways Association is recorded below in italic:

Document and description

Doc 1 – A copy of an agreement between Bristol Municipal Charities and Donald Harvey signed in 1925 plus photos of the accompanying map

Woodspring's comments

This agreement established rights of way for the Trustees, their agents and workman to use certain routes across land owned by Donald Harvey to adjacent public highways 'over and along the roads and paths coloured in blue on the said Ordnance map' ... 'either with or without carts motor vehicles horses and other animals.

The accompanying map shows the routes marked in blue running up to AX 16/31 but the actual track itself is not coloured in which shows that both parties accepted that this was already public route which could be used by carts, motor vehicles horse or other animals and that BMC did not have to obtain permission from Donald Harvey to use it.

Doc 2 – A photo of a map from the W and AK Johnston Ltd London to Edinburgh Road Atlas 3 miles to 1 Inch published in 1940

This clearly shows AX16/31 as a route with the same status as other minor roads in the area.

Doc 3 – A photo of a map from the Road Atlas for Great Britain by W and AK Johnston and GW Britain Ltd 3 miles to 1 inch reprinted in 1964, 65 and 66 for motoring, cycling and hiking.

Again this shows the route as having the same status as other minor roads in the area.

Doc 4 – A photo of map 17 from the Motor Coloured and Contoured Map of England and Wales published by W and AK Johnston 3 miles to 1 inch in 1966.

Again it clearly shows the route as having the same status as other minor roads in the area.

Doc 5 – A copy of a letter from Donald Harvey to Col Towill, BMC, dated May 3 1952.

This letter says that Mr Harvey had discussed the matter of public rights of way with his employees Frank Porter and his son – who lived at Woolers between 1924 and 1949 – and had reached the following agreement: “we submit that prior to 1940 there was always a recognised footpath from No 32 at “The Ball to the Bridle Path No 31.” (At the public inquiry Mr Porter’s daughter gave evidence that her father often came home furious because riders had trespassed in the woods. Urch’s solicitor took this to show that there was no bridleway in the woods, but this letter proves that Mr Porter had been consulted – and had agreed that AX16/31 was a bridleway from before 1940)

Doc 6 – A copy of the BMC minutes May 1952.

This shows that BMC acknowledged the route was a bridleway and that this was not just a personal view expressed by Colonel Towill.

Doc 7 – Copy of an undated report of a survey of BMC land at Congresbury made by Nelson Rooke, a Chartered Surveyor and Land Agent prior to its sale.

Page 3: “Public footpath and bridlepaths (shown in yellow) and Rights of Way (shown in blue)”. This shows that an independent surveyor acknowledged there were public bridleways in the woods.

Doc 8 – Copy of BMC particulars of Congresbury Woods which they are proposing to sell.

“Public footpath and bridle paths are shown on the attached plan.” This shows that BMC agreed there were public bridleways in the woods.

Doc 9 – Copy of a letter from Nelson Rooke to Col Towill, BMC, dated 13 February 1956.

Three public rights of way are referred to in the letter: a. westwards from Woolers to Star Inn, b. Southwards from south end of Ball Wood to Cleeve – Wrington Road and c. From Ball Wood westward through Urchinwood to Bridlepath.

Doc 10 – Copy of reply from Col Towill to Mr Rooke dated 16 February 1956.

“The three public rights of way ... must be included in the sale ... they have been rights from time immemorial”.

If these routes, one of which is described as running to the Bridle Path, are considered as being rights of way from time immemorial then so too must the bridle path.

Doc 11 – Copy of letter from John D Wood and Co t Col Towill, dated 20th February 1956.

“No comment submitted by Woodspring Bridleways Association”

Doc 12 – Copy of letter from Col Towill to John D Wood and Co dated 21 March 1956.

This letter again reiterates BMC’s rights over the routes marked in blue in the 1925 agreement with Donald Harvey. Col Towill says: “The Trustees have from time immemorial had the rights to haul timber of these routes. They have of course owned the land since the sixteenth century and their rights as Lords of the Manor of Congresbury rest on ancient usage.

Later in the letter he says that neighbours to the south have been given permission to use the routes “so that they could extract timber via the bridle paths and out of our woods at the Corporation Cottage entrance.

As the owners of the woods from the sixteenth century, it would seem obvious that BMC would have known exactly which were public rights of way over their property and what the status of those routes were.

Doc 13 – Report by Woodspring Bridleways Association detailing their criticism of the Inspector Decision Notice relating to their first application.

Listed within this document are the various instances which Woodspring Bridleways Association feel show the Inspector did not carry out a proper examination of all the evidence.

I do not intend to comment on Document 13 which is challenging the Inspectors Decision. If the applicants felt this strongly they had the opportunity of challenging the Inspectors Decision in the High Court. This was not undertaken therefore I am not placing this document in front of this Committee.

Doc 14 – History of Public Rights of Way from Wrington Road to Cleeve Hill called AX16/31

A chronological listing of Woodspring Bridleways Association’s understanding on the history of AX16/31.

In addition to the above listed documents further documents were submitted in March 2013 by Mrs A Gawthorpe of Woodspring Bridleways Association relating to the claimed bridleway. These documents are also attached to this report in **Appendix 15-16**.

These documents are listed below together with the emphasis that is being given to them by the applicant:

Doc 15 - Official diversion of Rocky Lane

The attached documents show that in 1877/78, the then owner of The Woodlands, William Long, the younger, applied for permission to divert the roadway known as Rocky Lane and that that diversion was certified and carried out.

These documents show that Rocky Lane was a public road. Had it been a footpath it would have been called such in the documents. The Somerset Quarter Sessions differentiated between footpath, halter paths and roads. This further buttresses our claim that the claimed route has higher rights than a footpath because no evidence has been found for stopping up Rocky Lane and the principle 'once a highway always a highway' applies.

Doc 16 - Evidence from Congresbury Parish Council Minutes

This shows that in 1938/39 councillors were aware that rights of way other than footpaths existed in the village when it was noted in the minutes that the footpath committee had assisted in providing the necessary help and information to tracing on the map the different footpaths and rights of way.

The applicants believe that this new evidence in conjunction with the evidence produced with the first application shows that this route should have a status higher than a footpath, therefore should be recorded as a **Bridleway**. The applicants believe that under the maxim of "Once a Highway, always a Highway" the evidence contained within the Quarter Session highway diversion shows that this route had a higher status than currently recorded.

The claimed route is illustrated as bold black dashed line on the attached Location plan EB/Mod 20/1 (scale 1:14989).

Analysis of the Documentary Evidence submitted by the Applicant

APPLICATION 1 – 19 July 1989

1. The first application and evidence submitted dated 1989 has been through the correct and complete process for Section 53 applications as defined by the Wildlife and Countryside Act 1981. The documentation held on file seems to imply that all relevant parties were consulted about the application and the making of the Order, which enabled objections to be submitted and ultimately appearance at the Public Inquiry held in May 1995.
2. The Public Inquiry was held over four days where everyone who wished to speak and present their evidence or opinion would have been allowed to do so. It would have been hoped that all available evidence would have been presented at this time so that the Inspector could make an informed judgement on whether this route should be reclassified as a Bridleway.
3. In the Inspectors Decision Notice dated 10 August 1995 (**Appendix 10**) the Inspector has detailed his opinion as to what he considered strong or weak, supported or disputed evidence from those who attended the Inquiry but also those whose opinion was given in writing and evidence submitted.
4. As with all cases like this it is **for the supporters of the Order to prove their case** and to have submitted all evidence which they consider relevant. That having been undertaken the Inspectors Decision Notice is the end of the process unless a High Court Challenge is lodged, which in this case was not. Therefore the applicants have missed their opportunity of challenging the decision made by the Inspector.
5. Unfortunately, I am not convinced that my file holds all of the information submitted at the Inquiry so I can only have regard for that which is detailed in the Inspectors decision.

APPLICATION 2 – 25 February 1996

5. At the Inquiry for the first application documents were produced by other parties to the Inspector which the representatives for Woodspring Bridleways Association were not aware of. Feeling that the evidence submitted to the Inspector may have been selectively submitted they have chosen to look at this source for themselves and believe that they have found new evidence which when considered with the previously submitted evidence supports their case. Therefore they decided to submit a second application which they did in February 1996.
6. As stated within Appendix 1 the legislation is quite clear as to what needs to be taken into consideration. The first application relied upon user evidence trying to prove that the requirements of Section 31 of the Highways Act 1980 had been proven, this was not accepted by the Inspector. The second application is now trying to show that this was a historical route acknowledged by the landowner, accepted by the public therefore still trying to prove the requirements of Section 31. As the applicants have submitted additional documents and maps which they consider to be new evidence, these need to be considered against the original evidence to establish whether these would have presented a different case to the Inspector.

Appendix 11 Doc 1 - Agreement between Bristol Municipal Charities and D Harvey dated 2 March 1925

This document is a private agreement between The Trustees of the Bristol Municipal Charities (Queen Elizabeth's Hospital Foundation) and Mr R D Harvey relating to rights of way through certain woods and land at Congresbury in the County of Somerset.

The following is extracted from the main document:

.....AND WHEREAS questions having arisen as to the rights hitherto enjoyed by the Trustees over the private Roads and paths belonging to the said Robert Donald Harvey the parties have determined with a view to settling such questions to enter into the Agreement hereinafter contained NOW IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:-

THAT the Trustees their agents and workmen are entitled to a right of way for the purposes of carting timber and stone only from the woods belonging to the Trustees to the adjacent public highways over and along the roads and paths coloured blue on the said Ordnance Map as the said Robert Donald Harvey doth hereby admit and acknowledge.

. THAT the Trustees their Tenants licensees owners and occupiers for the time being of the Cottages and land at Woolmers shown on the said Ordnance Map are entitled for all purposes connected with the use and enjoyment of the said Cottages to pass and repass over and along the roads and paths coloured blue on the said Ordnance Map and either with or without carts motor vehicles horses and other animals as the said Robert Donald Harvey doth hereby admit and acknowledge.

This document is a Memorandum of Agreement which relates to a private arrangement between the two owners of land adjoining each other. The applicant believes that this is a clear indication that the claimed route, which is not one of these, was considered to be a public highway as no rights were granted over it in this agreement.

Reference is made to this Agreement within the Land Registry documents for Title ST6611 and ST162588 now in the ownership of Mr & Mrs Kingston. Within the title documents for ST162588 it details rights granted along a section of the route being claimed to have higher rights. This therefore casts doubt as permission would not have been required if considered to have higher rights than currently recorded.

Appendix 11 Doc 2 - W and AK Johnson Ltd Road Atlas 3miles to 1" (date unknown)

This is an extract from a road atlas. The applicants claim that this illustrates a route on a similar alignment to that of the claimed bridleway and that its depiction means it was thought to be of a higher status than a footpath.

Appendix 11 Doc 3 - Road atlas for Great Britain by W and AK Johnson 3 miles to 1" reprinted 1964, 65 and 66

As with the plan above this is an extract from a road atlas. The applicants claim that this illustrates a route on a similar alignment to that of the claimed bridleway and that its depiction means it was thought to be of a higher status than a footpath.

Appendix 11 Doc 4 - Motored coloured and contoured Map of England and Wales 1966

Once again this is an extract from a road atlas. The applicants claim that this illustrates a route on a similar alignment to that of the claimed bridleway and that its depiction means it was thought to be of a higher status than a footpath.

Due to the small scale of the above three plans it is hard to see if the claimed route is illustrated or not. It should be noted that this plan also illustrates railway lines and rivers. It may contain routes which are now shown on the definitive map however due to the small scale cannot be considered strong evidence of existence or status.

Appendix 11 Doc 5 - Letter from Donald Harvey to Col Towill British Municipal Charities dated 3 May 1952

This is a letter from Donald Harvey to Colonel Towill, who seems to be disputing use made of routes on his land. Within this letter Mr Harvey makes reference to Bridlepath 31.

It is unclear as to whether this letter was presented to the Inquiry for the 1st application however it is documented that the Inspector was made very aware of Mr Harvey's view of "Bridlepath 31" which the Inspector ruled against, therefore I do not consider this to be new evidence.

Appendix 11 Doc 6 - British Municipal Charities Minutes May 1952

This relates to a recorded minute of a meeting between British Municipal Charities and Congresbury Parish Council. Again this relates to evidence submitted by Congresbury Parish Council at the Inquiry for the 1st application which was considered by the Inspector, therefore I do not consider this to be strong evidence or evidence which would have altered the Inspector's Decision.

Appendix 11 Doc 7 - Report by Nelson Rooke, Land Agent for British Municipal Charities undated

This document appears to be a draft report and certificate, with proposed amendments and underlined points for clarity including a paragraph relating to Public footpaths and bridlepaths. It is unknown as to why the writer has drawn distinction between Public Footpaths, bridlepaths and Rights of Way, unfortunately we do not have the plan referred to which again leads to my belief that this is a draft document and not the final version. I therefore do not think that this can be regarded as complete or strong evidence in this regard.

Appendix 11 Doc 8 - British Municipal Charities particulars of Congresbury Woods – proposed sale Undated

This document relates to the proposed selling of land owned by Bristol Municipal Charities but is not complete. It refers to a plan which is not included therefore cannot be regarded as complete or strong evidence.

Appendix 11 Doc 9 - Letter from Nelson Rooke to Col Towill dated 13 February 1956

This letter is requesting further information from the Bristol Municipal Charities, presumably relating to the proposed sale of land. Again there is reference made to "Bridle Path" when describing a route. However the document is not complete so can only be regarded as weak evidence.

Appendix 11 Doc 10 - Copy of reply from Col Towill to Mr Rooke dated 16 February 1956

This letter is the response to the previous letter (Document 9) and refers to three public rights of way but does not clarify whether these are footpaths or bridle paths. It should be remembered that at this time the Definitive Map process was ongoing and landowners were being made aware of which routes were being proposed by the Parish Council as Public Rights of Way. The 1st Inquiry addressed the DMMO process relating to this time [Inspectors Report para. 24.1 – 24.16]. It would be reasonable to assume that the parties of these letters were aware of what the Parish Council were proposing.

Appendix 11 Doc 11 - Letter from John D Wood & Co to Col Towill dated 20 February 1956

This letter is asking for further clarification on the rights of way coloured blue on an attached plan but that plan is not included within these documents (it should be noted that the agreement from 1925 has a map with routes in blue) which the applicants could be presuming is the one referred to. As this document is incomplete I can only regard this evidence as being weak evidence and not really being of assistance to this matter.

Appendix 11 Doc 12 - Copy of letter from Col Towill to John D Wood & Co dated 21 March 1956

This letter is the last in this series of exchange. This refers to Rights of Way 1 which clearly states that it is considered a private route for hauling. Rights of Way 2 and 3 are referred to routes used by the owner of the land from time immemorial for hauling timber. This does not make them public rights of way. It appears that these are the routes the subject for which Mr Harvey insisted upon an Agreement in 1925.

It is unfortunate that the documents 9-12 listed above are not complete, they are either missing pages or attachments which does not help this case. In order to be able to be considered new strong evidence they should be illustrating a complete picture not leaving their importance to interpretation. They can therefore only be regarded as weak evidence.

Appendix 11 Doc 14 – Woodspring Bridleways Association Chronological listing of documents and correspondence from 1925 – 1995

This document lists and gives a very brief outline of content for all the documents which were considered at 1st Inquiry and presented to this committee today. From this listing there is mention of a bridleway (original document called it a bridlepath). As previously stated I do not believe that my file contains all of the documentation considered at the Inquiry therefore I am unable to verify whether this document is accurate and have therefore not been able to give it much weight.

Additional Information submitted.

Appendix 11 Doc 15 - Official diversion of Rocky Lane

On the 17th August 1877 William Long the Younger submitted in writing his wish to divert “the Highway” called Rocky Lane in the Parish of Congresbury. The document describes his intention as follows:

.....leading from the Yatton and Wrington Road to a place called Woolmers in the said parish by stopping up and turning that portion of the said Rocky Lane which passes through

Woodlands and by his house fifty yards north of the said Yatton and Wrington Road at a point where a gate leads into a fields belonging to William Jane called Pilching in the occupation of Prudence Haverick and at a point about one hundred and eighty yards further north where a gate leads to Taylors Hill Wood and by substituting for the said portion of the said Rocky Lane so proposed to be stopped up and turned a New Road to be laid out and made about one hundred and eighty yards in length between the said points of diversion and deviating from the present Road about twenty five yards in a westerly direction

Within the Somerset Sessions Proceedings from Epiphany 1878 to Spring 1891 Inclusive the full process is described from William Long approaching the Highway Surveyors through to the Justices of the Peace viewing and certifying the alternative route. No other documentation has been found to show that an Order was made however it is believed that the due process was carried out legally.

The applicants claim that this shows that this was a public road. I do not agree. What this shows is that this route was considered to be a highway governed by the same rules as all highways.

The Highways Act of 1835 contains an interpretation of terms where "highways" shall be understood to mean all roads, bridges [not being county bridges], carriageways, cartways, horseways, bridleways, footways, causeways, churchways and pavements. Therefore whilst the document above clearly illustrates that this was considered to be a route used by the public, it does not assist in clarifying the use which was made of it.

The effect of this legal process was to move part of a route which happened to have a localised name of Rocky Lane away from a residential property. The references contained in the extract from the document above are the same as those referred to within the Tithe Apportionment. Around the time of The Tithe Map (1841) this area was a quarry so naming a route within in it as Rocky Lane could seem appropriate. Rocky Lane is described as proceeding through to Woolmers, it is a record of fact that this area once had a working Ochre Mine which again could explain the route having a localised name.

This document can be regarded as strong evidence in supporting that this route was a highway however is weak evidence in establishing what the status of this route should be.

Appendix 11 Doc 16 – Parish Council Minute dated 2 December 1938

This document is an extract from Congresbury Parish Council Minutes from 1938 which relates to the existence of footpaths which are being maintained and acknowledged by the Parish Council. It indicates that a map was held illustrating footpaths and rights of way within the village but a copy of this map has not been submitted and does not reference the route known as AX16/31. This does not provide any assistance in regard to the status of this route.

Further information relating to the Working Ochre Mining Mentioned above

A book named Earth Colours Mendip and Bristol Ochre Mining has a section within Chapter 7 (Broadfield Down) on page 161 which relates to Congresbury and Yatton. This book confirms that mining for Iron Ore was undertaken in Ball Wood and Corporation Wood around 1853 which only lasted for a few years. Mining continued in Kings Wood by differing companies.

This book makes reference on page 163 to the construction of the new roadway was in Urchinwood, and the track connected Woodlands to Woolmers. Whilst digging there,

Chamberlain discovered some portions of ochre of which at the time little notice was taken. It is reported that this was found to exist in large quantities and was worked with apparent success. These paragraphs show that the route which seems to have gained the name of Rocky Lane was constructed as a track for gaining access to the mines. Horse and cart may well have gone along these at this time but that would have been associated with workers going to work or extracting ochre from the mines, such use is regarded as private use not public. The two pages referred to are attached as **Appendix 13**.

User Evidence

User Evidence Forms

As detailed within Appendix 2 at the time of the submission of the first application 32 User Evidence were submitted and considered as part of the Public Inquiry held. At that time the appointed Inspector had the opportunity of hearing some of these persons presenting their evidence. This is detailed in section 20 of the Inspectors decision.

In the Inspectors conclusion [paragraphs 31 to 44] he clearly lays out the inference that he gave to the evidence presented resulting that the Order should not be confirmed.

As no new User Evidence has been submitted through the second application, no further consideration has been given to this section.

Consultation and Landowner Responses

Consultation Responses

In reviewing the effect that this second application has upon the determination of the 1st application on the 9 February 2015 informal consultations were undertaken where the landowners, applicants and local ward member were contacted.

Responses were received as follows:

Councillor T Leimdorfer – Email 30 March 2015

I spoke to Rosey Knifton, who was ward councillor at the time when this first came up in 1996. Her impression is that the applicants are trying to use evidence of horse-drawn traffic to the old mines as a basis for getting the footpath classed as a bridleway. The track which was probably used for carrying material to and from the mines does not follow the route of AX16/31 (except at the very start, then it runs parallel) and does not extend beyond the mine workings. I hope that the committee will have a site inspection at the Congresbury end of the path before considering making any new order.

Michelmores – dated 9 October 2015 acting for Mr & Mrs S Kingston

Michelmores are acting as the agents for the owners of the land. Under a FOI request they have had access to the documents submitted for the 2nd application. They detail their opinion on the background, the Law and the documents submitted as part of the 2nd Application. They conclude they do not feel that sufficient evidence has been submitted for the Committee to find on “balance of probabilities” that a mistake was made in the production of the definitive map. The response which they have submitted is attached to this report as **Appendix 14**.

Woodspring Bridleways Association

A further statement has been submitted detailing the history behind their decision to submit a new application and the importance they place against this evidence. The content of this has been detailed within this report at Appendix 3, for completeness this statement is attached to this report as **Appendix 15**.

Date of Challenge

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. Within this second application no event has been specified however as the application has been submitted in 1996 this would be regarded as the date of challenge.

As can be seen from the first application the Inspector was unclear as to what date should be regarded as the date of challenge, a number of dates seems to be referred to namely 1955, 1964, 1969, 1975, 1989 and now 1996.

The new evidence which has been submitted relates to historical evidence which does not assist in establishing a date of challenge.

Summary of Evidence and Conclusion

As can be seen from the Inspectors Decision [**Appendix 10**] a large amount of evidence was presented and considered at the Public Inquiry held in May 1995. The 1st Application submitted relied upon User Evidence claiming that 20 years or more uninterrupted use had been made of this route as a bridleway, an argument which was not accepted by the Inspector who concluded:

“In summary, the Order seems to fail on all counts. I do not find that the criteria set out in HA80 Section 31(1) have been met; on the other hand, I find that the criteria of Section 31(3) have been met. A case has not been adequately made to persuade me that public bridleways subsist or are reasonably alleged to subsist either over the public footpaths or over the two new routes described in the Order”.

The criteria referred to above is as follows:

Section 31 Highways Act 1980

- (1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (3) 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 1 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

Following the decision of the Inspector, Woodspring Bridleway Association undertook further investigation into this area. Having found further documents which they believe clarify the status of the route currently recorded as Footpath AX 16/31. They chose to submit a new application, claiming that had this evidence been presented at the 1st Inquiry the Inspector would have formed a different opinion.

In Appendix 4 I have detailed the new documents submitted and my opinion on the strength of the evidence they contain.

Although **Appendix 11 Doc 1** may not have been presented at the Inquiry I do believe that parties were aware of its existence as it is detailed in Land Registry documents and therefore may have been discussed at the Inquiry. This is a private agreement between two landowners and it is unclear as to why the existing route was not highlighted. The applicant would suggest that this was because this was already a route used by horseriders, alternatively it could be that agreement already existed through another document which has not been located.

Appendix 11 Docs 2, 3 and 4 do not assist this investigation at all due to the limiting scale and quality of the documents provided. I am unaware as to whether the original maps included a key advising upon the status of routes.

I consider that the content of **Appendix 11 Docs 5 and 6** was discussed at the Inquiry in 1996.

Appendix 11 Doc 7, 8, 9 are incomplete documents so it is hard to evaluate what strength they give to this matter.

Appendix 11 Docs 10, 11 and 12 all follow on from Document 9 where questions and answers are going backwards and forwards. Once again there are parts of this correspondence which is missing which would have assisted in evaluating their strength. As previously stated it is essential that a complete picture is presented whenever possible when trying to prove a point.

I have nothing to add in regard to **Appendix 11 Doc 14**.

Appendix 12 Doc 15 details the differing stages that an application needed to go through when seeking authority to divert a highway in 1877. It is my understanding, which has been confirmed by the Archivist at Somerset Heritage Centre that the process has been fully documented however there should be a Legal Order which would have completed the process following the certification of the route. This has been looked for at the records office but not found. That being said it would appear that the line of the highway was diverted to the line today however its status is unclear.

Appendix 12 Doc 16 is an extract from Congresbury Parish Council Minutes from 1938 which clearly shows that they were undertaking works to footpaths within the parish and recording them on a plan. Footpath AX 16/31 is not identified in this document and therefore does not assist in supporting the claim.

Appendix 13 provides information relating to the use of this land back in 1870 which may explain why this route was given the name of Rocky Lane.

It is quite clear from the representation submitted by Michelmore, **Appendix 14**, acting for the owners of the land that they do not feel that the evidence supports the making of an Order to change the status of this route.

Appendix 15 is further clarifying statements already submitted by Woodspring Bridleways Association and have been addressed within this report.

Officers Opinion

I have been advised by the Planning Inspectorate that when a new application has been submitted following the decision of an Inspector to decline the confirmation of an Order it is necessary for the authority to look at both the initial application and the new application to see if the new evidence would have presented a differing view from the Inspector.

I believe that all evidence relevant to this matter has been included within this report so that the Committee can make a balanced judgement as to whether another order should be made.

Whilst evidence has shown that this route has been in existence since 1870 as a means of accessing the ochre mines this has not assisted the claim that this route should have been recorded during the Definitive Map Process as a Bridleway.

Evidence is clear within the Inspectors Decision that Congresbury Parish Council provided evidence on the production of the Definitive Map in 1950 and that no objections were made when this route was recorded as a footpath either by users or landowners. These surveys were carried out by persons on foot who knew the locality.

Correspondence from the Agent acting for the current landowners has clearly illustrated that they do not believe that the applicants have submitted evidence which would have changed the decision of the Inspector.

Taking all of the documentation contained within this report I do not consider that sufficient evidence has been submitted to show that an Order should be made to record Footpath AX16/31 as a bridleway on the Definitive Map.

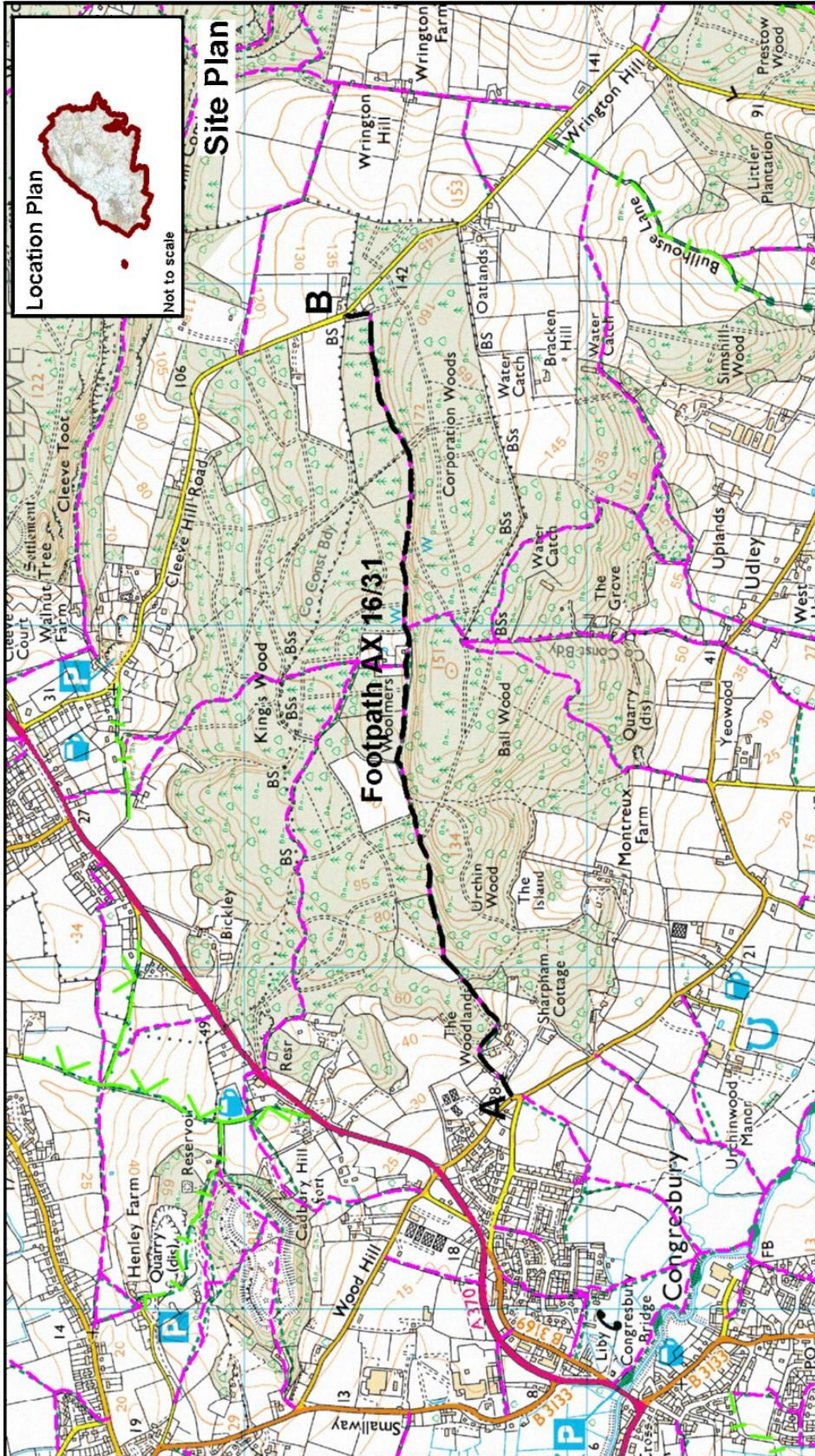
Conclusion

This application affects a route which is already recorded on the Definitive Map as a Footpath. To alter the status of a route on the Definitive Map, the evidence must indicate that the route which is already recorded "**ought**" to be shown as a route of a different status. This is considered a stronger test than a simple addition to the Definitive Map, where the requirement is that a right of way "is reasonably alleged to subsist". The term "ought" involves a judgement that a case has been made and that it is felt that the evidence reviewed in the investigation supports the application on the balance of probabilities.

The applicants have undertaken detailed and diligent investigation when submitting their applications. However having regard for the test laid down by Section 31(1) (Appendix 1 para 4) having evaluated this matter it is my opinion that the new evidence is not sufficient to alter the conclusions drawn by the Inspector at the Inquiry held in 1995.

Similarly, nothing has been presented by the applicant which would challenge the evidence presented at the 1st Inquiry by the landowners in regard to the actions taken to challenge or negate use. Therefore I believe that the Inspectors decision in regard to the test as required by Section 31 (3) (Appendix 1 para 4) still stands.

I therefore conclude that nothing within this application supports changing the status of Footpath AX16/31 to Bridleway and therefore should not be processed as it fails to meet the legal tests required.



Map No. EB/Mod 20
Scale 1:14989
Grid Reference
Date 20 February 2013
Claimed route ———

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

Wildlife & Countryside Act 1981 - Sec 53 North Somerset District Council
Proposed DMMO Wrington Woods Congressbury.
 Footpath AX 16/31 Wrington Road
 to Cleeve Hill Road



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