

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 27 SEPTEMBER 2017

SUBJECT OF REPORT: FOOTPATH AX24/6 PUXTON MOOR

TOWN OR PARISH: PUXTON

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee do not authorise the making of a Definitive Map Modification Order for the route A-B-D on the grounds that there is insufficient evidence to show that Byway Open to all Traffic rights have been established.
- (ii) the Public Rights of Way Sub Committee authorise the relevant Officer to make a Definitive Map Modification Order for the route B-C on the grounds that there is strong evidence that a Footpath should be recorded.

SUMMARY OF REPORT

The determination of this application is by Direction from the Secretary of State dated 21 March 2017. Within that direction this application is required to be determined by 31 December 2017.

This report considers an application which was made on the 22 October 1995.

Two routes have been claimed within this application. The first route claimed requests that the majority of a particular route, Footpath AX24/6 in the Parish of Puxton, should be recorded as a Byway Open to all Traffic (A-B-D on the attached plan EB/Mod29a).

The second route which has been claimed, which is currently unrecorded is a Footpath (B-C on the attached plan EB/Mod29a).

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 is based only on historical documentary evidence. A Plan, EB/Mod29a, showing the claimed routes A-B-D and B-C is attached.

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/Mod29a

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Applicants Evidence

Appendix 4 – Additional Documentary Evidence

Appendix 5 – Consultation and Landowners Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – The Applicants Application

Document 2a,b,c,d,e– Congresbury, Wick St Lawrence & Puxton Enclosure Award 1814

Document 3a, 3b & 3c – Puxton Tithe Map and Apportionment 1840

Document 4 – Wick St Lawrence Tithe Map 1840

Document 5a & 5b – Finance Act map 1910

Document 6a & 6b – Handover Map 1930

Document 7 – Definitive Map 1956

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”.

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 Planning Inspectorate who act for the Secretary of State for Food and Rural Affairs for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Planning Inspectorate.

Conclusion

As this report relates to a route which is recorded on the Definitive Map and two sections which are unrecorded it is necessary for the Committee to have regard to two legal tests.

1. Section 53 (3)(c)(ii) relating to the section recorded as Footpath AX24/6 is 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; and;
2. Section 53(3)(c)(i) relating to the section which is currently unrecorded is whether, given the evidence available that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

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**.

CONSULTATION

Although North Somerset Council is not required to carry out consultations at this stage neighbouring landowners have been contacted. In addition to this Puxton 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 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.

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. Due to the number of outstanding applications awaiting determination officers of North Somerset Council, in conjunction with the PROW Rights of Way Sub Committee have agreed a three tier approach when determining the directed applications. A report was presented to the Committee in November 2016 which outlined a more streamline approach. This could result in challenges being made against the Council for not considering all evidence.

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.

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.

CORPORATE IMPLICATIONS

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

OPTIONS CONSIDERED

The options that need to be considered are:

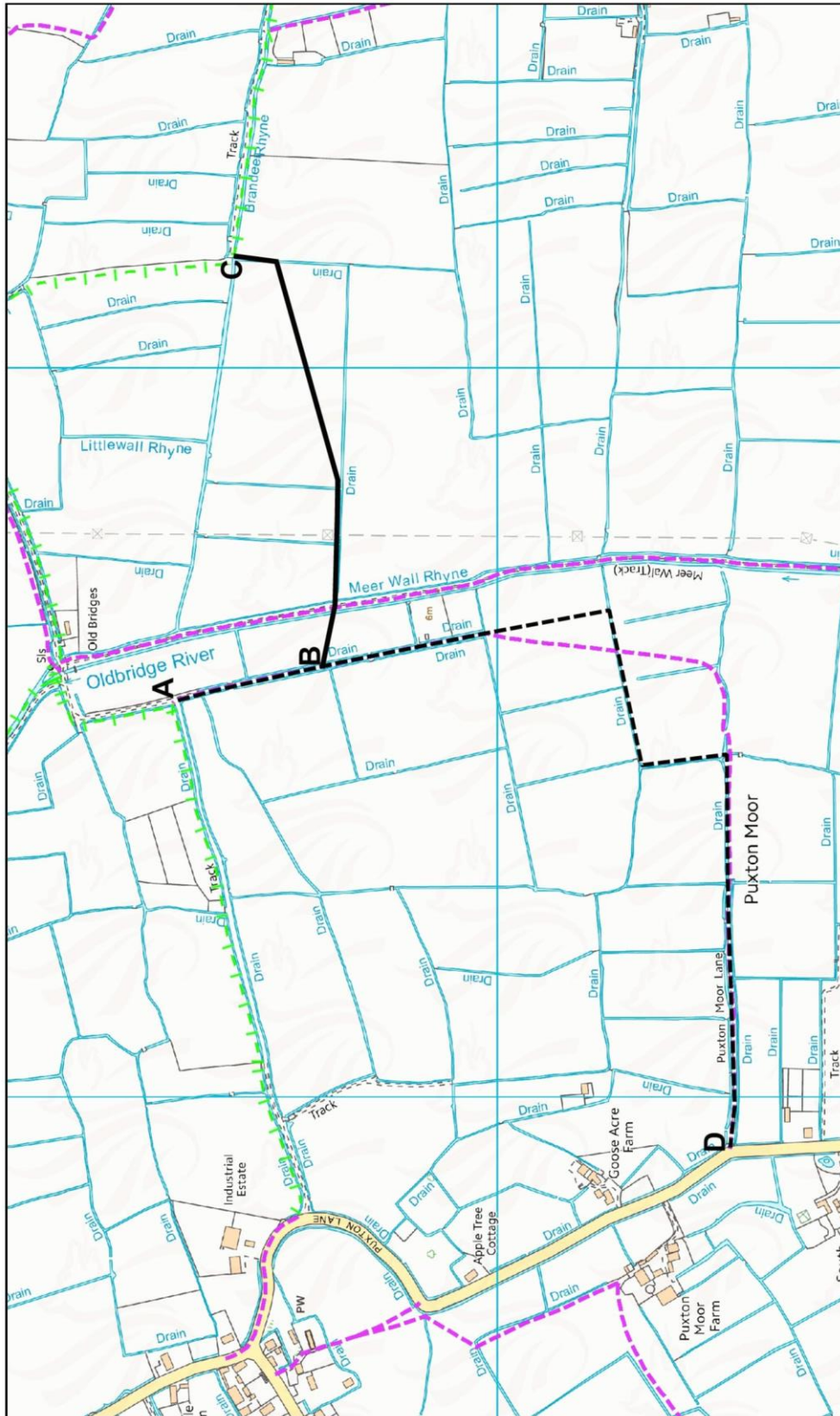
1. Whether the evidence supports the making of a Definitive Map Modification Order for the routes A-B-D and B-C
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for the route A-B-D and B-C

AUTHOR

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BACKGROUND PAPERS: - Public Rights of Way File Mod 29a

LOCATION PLAN EB/Mod29a





Public Rights of Way
 Scale: 1:7000
 Drawn by: Lucy Roca
 Date: 28 July 2017
 Time: 11:56:29

MOD 29a - Puxton Moor Lane, Puxton
 A-B-D Claimed BOAT, B-C Claimed Footpath (Grid Ref. ST4163)



 North Somerset COUNCIL

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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, 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 –

- (i) "that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic"
- (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 claimed Byway Open to All Traffic (A-B-D) and the claimed Footpath (B-C) that the requirement of Section 53(3)(c)(i) and (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 path can be shown to be a public right 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

1. An application for a modification to the Definitive Map and Statement was received dated 22 October 1995 from Ms J Roseff representing Woodspring Bridleways Association ("The Association"). The basis of this application was that a route A-B-D should be recorded as a Byway Open to all Traffic and B-C should be recorded as a Footpath. The applicant listed upon their claim the documents which were felt relevant and the details of the landowners notified of the claim.

Listed below is the documentary evidence that the Association referred to:

1814 Congresbury, Wick St Lawrence and Puxton Enclosure Award

The above document will be reported upon in **Appendix 3**.

This matter is currently recorded on the Definitive Map Register as Mod 29a.

It should be noted that the Council has undertaken additional research into records that are held within the Council which will be listed within **Appendix 4**.

2. The 1995 application claims that a Byway Open to all Traffic and a Footpath should be recorded over routes within Puxton Moor.

The claimed Byway Open to All Traffic runs between its junction with Bridleway AX24/5 to its junction with Puxton Lane. Most of this claimed route (A-B-D) is recorded on the Definitive Map as Footpath AX24/6.

In addition to this the claimed Footpath (B-C). This route is un-recorded commencing from its junction with Footpath AX16/37 to its junction with Bridleway AX16/37.

As can be seen on the Location plan attached to this report the claimed route (A-B-D) south south-east of point B deviates off the line of Footpath AX24/6 (shown as a pink dashed line) keeping to field edges before re-joining onto Footpath AX24/6 for the remainder of its length. The claimed route falls in the Parish of Puxton.

3. The claimed Byway Open to All Traffic (A-B-D) is illustrated as a bold black dashed line and the Footpath (B-C) is illustrated as a bold solid black line on the attached Location Map EB/Mod29a. (Scale 1:7000).

Applicants Evidence

The claim is based on documentary evidence submitted by the applicant, a copy of which is attached to this report as **Document 1**. The routes are illustrated on the Location plan attached EB/Mod29a.

Congresbury, Wick St Lawrence & Puxton Enclosure Award (1814) North Somerset Council

The applicant has referred to this document within the original application. This plan relates to the parishes of Congresbury, Wick St Lawrence & Puxton, which are demonstrated over various plans within the award. For this application, the route is demonstrated in Plan B **Document 2a** and Plan D **Document 2d**.

Claimed Byway open to all Traffic (A-B-D)

Point A begins to the north of Plan B on a red shaded track labelled XXXIV, which is described in the award as West Dolmoor Drove; **Document 2b**.

‘West Dolmoor Drove – One private carriage Road or Drove of the breadth of twenty four feet extending from a certain Gate called West Dolmoor Gate over West Dolmoor to the Corner of Puxton Moor called West Dolmoor Drove and numbered XXXIV on the said Plan B’.

At Point B however, there is a thin dashed line emerging from the west labelled XXXVI which connects to West Dolmoor Drove. This is described in the award as a Public Footway; **Document 2b**.

‘One Public Footway of the breadth of four feet extending from an Old Inclosure on the West side of West Dolmoor at the ancient Footbridge there over the said allotments hereinafter set out to the said Sarah Durban and also over Allotments hereinafter set out to the Right Honourable Lord Middleton and Edward Francis Colston Esquire and to Arthur Hewlett respectively to the ancient footbridge on Meer Wall and numbered XXXVI on the said Plan B’.

Also along West Dolmoor Drove there is another junction just below Point B leading to the west labelled XXXV, described as Durbans Drove **Document 2b**.

‘Durbans Drove – One other private Carriage Road or Drove of the breadth of sixteen feet leading from West Dolmoor Drove aforesaid to an Allotment hereinafter set out to Sarah Durban as Lessee under Mrs Jane Somerville calle Durbans Drove and numbered XXXV on the said Plan B’

Continuing on West Dolmoor Drove (Point B of the claimed route) the claimed route, continues south adjacent to fields which then bends to the left in a westward direction then again southerly this being the end of the route depicted upon Document 2a. The route continues illustrated on Document 2d, proceeding to the

West along another private road labelled XXVIII until it reaches the junction of route XXVII at Point D described as Moor Drove in **Document 2e**.

‘Moor Drove – One other private carriage Road or Drove of the Breadth of twenty four feet in Puxton Moor aforesaid extending from the last mentioned Road called Banwell Road after the northern boundary of the said Moor to the corner of West Dolmoor called Moor Drove and numbered XXVIII on the said Plan D.’

Claimed Footpath (B-C)

For the claimed route of B-C, as mentioned in the award statement previously (Document 2b), the footpath of XXXVI continues to the east and crosses Holebridge Yeo via the East Dolmoor Bridge joining onto another private road labelled XXXI. This then continues eastward on another thin dashed line labelled XXXIII across East Dolmoor which eventually joins onto another private road labelled XXXII to Point C of the claimed route.

‘Plaisters Drove – One Private Carriage Road or Drove of the breadth of sixteen feet extending from a Bridge hereinafter mentioned to be erected over Hollbridge Yeo over East Dolmoor aforesaid to an allotment hereinafter set out to Richard Woolfryes as Lessee under the said Governors called Plaisters Drove and numbered XXXI on the said Plan B.

City Drove – One other Private carriage Road or Drove of the breadth of sixteen feet extending from a Gate known by the name of East Dolmoor Gate to the said Allotment hereinafter set out to the said Richard Woolfryes called the City Drove and numbered XXXII on the said Plan B.

One Public Footway of the breadth of four feet extending from the Eastern Extremity of Plaisters Drove aforesaid over the said Allotment hereinafter set out to the said Richard Woolfryes to the Southern extremity of the City Drove aforesaid and numbered XXXIII on the said Plan B.’

The Award description is shown in **Document 2c**.

From this Enclosure Award, it suggests that a public footpath was in existence running between two private carriage roads.

Analysis of Additional Documentary Evidence

Puxton Tithe Map & Apportionment (1840) North Somerset Council

This document refers to the Parish of Puxton and illustrates locations of Point A and Point D of the claimed route. At Point A there is a gate, indicated by a solid black line across the track. However the claimed route is then not depicted as it falls within the Wick St Lawrence Tithe.

This Map is illustrated in **Document 3a & 3b**.

What can be seen on this plan that south of Point B, the continuation of this route is missing in sections, thereby questioning the existence of a through route. This continuation opens out onto an allotment numbered 67. Within the Apportionment of the Puxton Tithe, allotment 67 is indicated to the ownership of William Wyndham Esquire and occupied by John Rogers as pasture land.

The Apportionment is shown in **Document 3c**.

At Point D on the map there is also a gate preventing access onto Puxton Moor. The route shows that it is enclosed at either side until halfway along it opens out providing access to allotments numbered 80 & 87, which implies that the route was primarily used for landowner access only.

Between the end of the track from point A (the Wick St Lawrence Tithe) and the end of the track from Point D, there isn't a through route that connects them together, only evidence of various allotments.

Wick St Lawrence Tithe Map (1840) Somerset Record Office Ref: D/D/Rt/M/126

This document refers to the Parish of Wick St Lawrence, but illustrates the section from Puxton Moor that was not available within the Puxton Tithe Map. The map demonstrates the route from Point A to B as a bounded track which is numbered 494. However I was unable to access the Apportionment to reference the number given along this route.

This Map is illustrated in **Document 4**.

Furthermore, neither Tithe Maps show evidence of the route B-C.

Finance Act (1910) North Somerset Council

The Finance Act allowed for the levying of a tax on the increase in value of land. All holdings or hereditaments were surveyed and recorded with an individual number on a special edition of the Second Edition OS County Series Maps at 1:2500 scales. The Finance Act process was to ascertain tax liability not the status of highways. The documents are relevant where a deduction in value of land is claimed on the grounds of the existence of a highway.

This information was recorded on the Second Edition 1903 O S map on Sheets X.11 and X.12. To the left of Point A there is a pecked line which could indicate a barrier

at this junction, which could imply that this route is for private access. The route from A – B is demonstrated as a bounded track at either side with openings to the adjoining fields. Beyond Point B, the track continues eventually ending at an opening to several hereditaments.

To the south-west of this point there is another indication of a barrier to the route before joining onto the bounded track, which is described as Puxton Moor Lane on the plan. This continues to the west until it reaches Point D, whereby there is another pecked line at its junction with Puxton Lane. Between Points A-B–D there is no evidence of a through route.

In regard to the claimed Footpath, sheet X.12 shows the location of Point C at the bend in Dolemoor Lane. However again there is no indication of the footpath illustrated upon the Enclosure Award, which would have connected to Point B.

These Maps can be located in **Documents 5a & 5b**.

Handover Map (1930) North Somerset Council

These records were prepared from the 1929 Handover plans which were produced when Somerset County Council passed responsibility for maintenance of highways to Axbridge District Council. The purpose of this was to record routes that were to be maintained at the public expense by the local highway authority. These records are recorded on a map base dated 1887.

The map detail contained within this is the same as that shown on the Finance Act Plan. There is no indication that either of these claimed routes were considered as maintainable by the Local Authority, therefore does not assist with these claims.

An extract and enlarged extract of this plan is attached as **Document 6a & 6b**.

Definitive Map (1956) North Somerset Council

The definitive map process was carried out over many years going through various processes which involved the area being surveyed by local people and advertisements being placed detailing that maps were being held on deposit for public viewing. This process was carried out through a Draft, Draft Modifications and Provisional stage before the Definitive Map was published. Any objections about routes that were included or routes that had been omitted were considered by Somerset County Council and amended if considered relevant.

This map illustrates Footpath AX24/6 commencing north of Point A then proceeding in a southerly direction through Point A and Point B before continuing to the west through various allotments within Puxton Moor, eventually ending on Puxton Lane.

No evidence has been found to suggest that at the time the Definitive Map was produced, that this route continued south of Point B to Point D. It should be noted that at some time since the Definitive Map was produced that the line of Footpath AX24/6 has been diverted so that the Footpath currently follows the majority of the route claimed.

This Map is found in **Document 7**.

Consultation and Landowner Responses

A pre-order consultation letter was sent to adjoining landowners and interested parties on the 3 July 2017. The following responses have been received.

Consultation Responses

The following parties responded to this consultation, the content of their response also being recorded.

Name	Objection or Supporter	Comment
Bristol Water	No Objection	We confirm that we have no objection to the proposed stopping up modification order Section 53 Puxton Moor App for Byway Open to all Traffic.
Virgin Media	No Objection	Virgin Media and Vital plant should not be affected by your proposed work and no strategic additions to our existing network are envisaged in the immediate future.
National Grid	No Objection	Searched based on your enquiry have identified that there is no record of apparatus in the immediate vicinity of your enquiry. Candent and national Grid therefore have no objection to these proposed activities.
Atkins Global	No Objection	Please accept this email as confirmation that Vodafone: Fixed does not have apparatus within the vicinity of your proposed works detailed below.
GP - Green Lanes Protection Group	Objection	<p>GLPG objects to all applications. The common factor is that the applications are defective to the point of failing to satisfy the accuracy required under WCA 1981 Sch 14 and W&C Regs 1993 Sch 7 as found in <i>Winchester College + Humphrey Feeds v Hampshire CC [2008] EWCA Civ 431</i>. That case was found by the Supreme Court in <i>R (TRF) v Dorset CC [2015] UKSC 18</i> to have been correctly decided. Under <i>Maroudas v SoSEFRA+OxCC 18 March 10 CA</i> they cannot be made good.</p> <p>There is a lack of correlation between claims/maps; Cat 1 – The application map as shown on the NSC s53B (website) register Cat 2 – The NSC route map as shown on the NSC s53B (website) register Cat 3- The notification maps sent out in anticipation of a DMMO For Mod 30 Cat 1 – This shows the claim route A-B + B-D (also footpath claim B-C) Cat 2 – This shows the claim route A-B-D but differs as to the configuration of section 34 at the SE corner</p>

BT Openreach	No Objection	Cat 3 – There are two maps, identified as Mods 30c and 30d. They do not appear to relate to the claimed routes under Mod 30 on the website.
North Somerset Levels Internal Drainage Board	No Objection	Openreach does not appear to have plant in the area of your proposals. Openreach will not object to this order, however we will insist on maintaining our rights under the appropriate legislation. If plant has to be resited then charges will be raised to recover these costs. Please ensure that the developer/owner is aware of this information.
Clerk to Congresbury Parish Council	Objection	Although the Board has no objection to the proposal, that fact that large machinery will be using these Lanes and Drovers under their statutory powers of entry, on a bi-annual basis and in an emergency, and this may cause conflict with other byway users. Any fencing or gates that are to be provided should be wide enough to allow the passage of the IDB's machinery. The Board would also recommend that any proposals for such works be discussed with the IBD prior to installation.
Avon Wildlife Trust	Objection	The Parish council has no objection to the byways being open to all traffic apart from the 'mechanically propelled vehicle' element of the designation as it was considered to be inappropriate to the nature of the byways as old unmade farm tracks and narrow footpaths. We object to this proposal for the following reasons outlined below: The route is totally unsuitable for general vehicle access. Large sections of the route do not resemble any kind of track way and it passes through fields adjacent to SSSI ditches. Within Puxton Moor Nature Reserve the route is located on low-lying land with heavy clay soils. It is a grassed track with no hard surfacing and for much of the year it is water-logged. During this time it is impassable to all vehicles except tractors or specialist machinery. Even during dry periods sections of the route would only be accessible to 4-wheel drive vehicles. There is no reason to suppose conditions along this route would have been much wetter and therefore even less accessible before modern land drainage methods were developed. Avon Wildlife Trust have owned the majority of the land that this route crosses, part of Puxton Moor Nature Reserve, for 19 years. To our knowledge the only access along the route during this time and during the years prior to our ownership has been for users of the footpath, graziers moving livestock and occasional specialist vehicular access to manage the rhynes. It is important to note that even vehicles have to divert from the route as it crosses ditches. The crossing points are strictly for pedestrians and inappropriate for horses or vehicles (Please see photos attached).

Access to the route is restricted by gates at the entrance to the nature reserve and along the internal drove. The land is clearly signed belonging to Avon Wildlife Trust and yet we have not been approached by any members of the public wishing to gain access. The attached photograph shows the gate at the Puxton Moor Lane end of the reserve. To our knowledge it is only used for farm access and is only suitable for 4WD vehicles. We suggest that the nearby Dolemoor Lane would have been the route used by vehicles and horses for many years. Unrestricted vehicular or horse access along this route would cause serious poaching, erosion and soil compaction. This route forms part of the Puxton Moors SSSI (Which covers the rhyndes, a 6-meter buffer zone around them). Any activities that damage habitats within the SSSI may be an offence under the Wildlife and Countryside Act. We strongly recommend that Natural England are consulted upon the likely impacts of this proposal. Furthermore, Illegal fly-tipping is a major issue along nearby Dolemoor Lane. We're concerned that similar problems will occur at the entrance to the reserve on Puxton Moor Lane should the gate be removed. We would suggest that anyone attempting to negotiate this route without an appropriate off-road vehicle and training could be at risk to themselves, to users of the footpath and to livestock.

DM - Green Lanes Protection Group Objection

The Applicant, listed only one item of documentary evidence in support of their application on their application form, the Congresbury Inclosure Award. However they did not provide copies of the Inclosure award, only a transcript of part of it. Nor did they provide copies of the relevant inclosure plan, which the transcript indicates were annexed to the award and signed by the inclosure commissioners, i.e. was an integral part of the award. It seems to me, therefore, that because this documentary evidence provided was not the same as that listed, i.e. a copy of a transcript was provided instead of copies of the original award including the plan, and this application does not qualify for exemption under section 67(3) of the NERC Act. The absence of copies of the original inclosure award, award plan and original title apportionment plan means that the applicant's transcription and interpretation of this evidence cannot be checked against the original documents, other than a visit to the archives holding the original documents. Such verification is crucial for interpretation of the evidence especially because there appears to be at least one error in the inclosure award transcript or the applicant's interpretation of the transcript. In their interpretation, the applicant states that the "*Local Act was passed in 1809*" (page 2), but the title of their transcript says that the "*Act passed 18 May 1814*" (page 5). The application map identifies the route A-B-D, for which the BOAT application was made, as corresponding

to the routes numbered 28 and 34 in the inclosure award. However in the absence of the original inclosure award plan, this identification cannot be verified. Moreover it appears from the transcript of the award that routes 28 and 34 did not form a through route. Route 28 is described as “*extending from ... Banwell Road ... to the corner of West Dolmoor ... and numbered XXVIII on the said Plan D*”; route 34 is described as “*extending from a certain gate called West Dolmoor Gate over West Dolmoor to the corner of Puxton Moor ... and numbered XXXIV on the said Plan B*”. Route 28 is on Plan D and route 34 is on Plan B; route 28 terminates at the corner of West Dolmoor and route 34 starts at West Dolmoor Gate. If the two routes formed a through route, I would have expected the termination of one to be described in the same words as the start of the other, and for them to have been shown (at least in part) on both plans. The applicant argues that the inclosure commissioners’ order that the private carriage roads and bridges (including routes 28 and 34) which they set out should be “*for the benefit use and enjoyment of all and every the owners tenants and occupiers of the several and respective Divisions and allotments plots and parcels of land hereinafter .. allotted and awarded with free liberty for them and every of them and all and every other person and persons who shall or may have occasion to travel there to go pass and repass in through and over the same private carriage roads and Bridges*” (pages 11 and 12), implies that the public had the right to use the private carriage roads. But this wording is not the same as the inclosure commissioners used in relation to the public footways which they set out and ordered should “*be and remain to and for the use of all His Majestys Liege Subjects who may have occasion to use the same*” (page 11). I submit that if the inclosure commissioners had intended to grant new, or confirm existing, public vehicular rights over the private carriage roads described in their award, they would not have described the carriage roads as private, and they would have specified, as they did with the public footways, that the people having the right to use the routes were all the sovereign’s subjects. The judgment in *Dunlop v Secretary of State for the Environment and Cambridgeshire County Council (1995) 70 P.&C.R.307* may be relevant here, as it is later than the Inspector’s decision (FPS/5073/7/23) relied on by the applicant (page 3).

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.

In regard to the claimed routes A-B-D and B-C, this application has been submitted solely supported by historical evidence, no user evidence or detail of any challenges being made on users Therefore this application will have no further regard for Section 31 of the Highways Act 1980.

Summary of Evidence and Conclusions

Looking at all of the evidence which has been presented and considered this route was first identified as a through route from points A-B-D in the 1814 Congresbury, Wick St Lawrence & Puxton Enclosure Award known as West Dolmoor Drove and Moor Drove, which were both set out as Private Roads or Drovers to be maintained by the owner of the land.

For route B-C, this is illustrated as a connection as a Public Footpath from Plaisters Drove to City Drove, however these named droves were also set out as Private Roads or Drovers.

All of the other documents looked at have not depicted the route A-B-D as a through route. This has frequently been shown as sections of bounded track leading to adjoining fields within Puxton Moor. Such depiction must cast doubt upon the use of this route by the public.

All of the plans which have been looked at and included within this report show the route depicted in the same way as a track bounded on both sides from Point A to just past Point B and from Point D to halfway across the Moor. Between these tracks are a number of fields, which would be maintained by the landowners, meaning the only mechanical access along these tracks would be for farmer's vehicles and tractors.

During the production of the Definitive Map in 1950 the only route to be recorded in the survey was that of Footpath AX24/6. This route begins north of Point A to south of Point B and then continues west across the Moor to Puxton Lane via Goose Acre Farm, not continuing along the claimed route. As previously mentioned the current line of Footpath AX24/6 only came into being following a legal diversion order. It is reasonable to presume that prior to such diversion, public access was not available between Point B and D.

Taking all the documentary evidence into consideration it would appear there is insufficient evidence to support the claim that the route A-B-D should be recorded on the Definitive Map as a Byway Open to All Traffic. In addition, no user evidence has been supplied to suggest these routes have ever been used other than as a Footpath.

The applicants will suggest that the fact that these routes are illustrated on maps shows that they were routes capable of being used by the transport of the time, at least horse and carriage (Once a Highway, Always a Highway). This may be true, it is not inconceivable to suggest that users of the route would not have been able to dismount and open gates. These would have been an inconvenience but not impossible to navigate if accessible. However, no evidence has been submitted to suggest that is what happened.

As none of the evidence considered above has raised the presumption that this route was used by vehicular traffic, I have not considered the effect of the Natural Environment and Rural Communities Act 2006 (NERC).

Therefore, a judgement can only be made on the evidence placed before us and based on this documentary evidence, the Officer does not feel that the evidence supports the claim that the route A-B-D should be recorded as a Byways open to all Traffic.

On the other hand, the depiction of a Footpath between Points B and C on the Enclosure Award should be regarded as strong evidence that this route should be appearing on the Definitive Map. However, it is unclear as to why it is not registered on the Definitive map considering its existence in the Enclosure Award, which predates the Definitive Map Process. Therefore, the Officer feels the evidence is suitable to support the claim that the route, B-C should be recorded as a Footpath.

Consultation Responses

As detailed within **Appendix 5** out of the consultation which were received eight responses were received. Three responses of objections, no responses of support and six confirming no objection. Those objecting have provided information relating to their personal knowledge of the area of land. No further evidence was submitted which could have been included within this report.

Conclusion

This application affects a route which is already recorded on the Definitive Map as a Footpath as well as unrecorded routes. 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.

Therefore, it is felt by the officer that the documentary evidence does not support the claim that the route A-B-D should be recorded on the Definitive Map as a Byways open to all Traffic. However the officer does feel there is strong evidence that the route B-C should be recorded as a Footpath.

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-D as a Byway Open to All Traffic.
2. Whether the evidence supports the making of a Definitive Map Modification Order for the route B-C as a Footpath.
3. Whether the application should be denied in regard to the claim for a Byway Open to All Traffic on the route A-B-D as there is insufficient evidence to support the making of an Order.
4. Whether the application should be denied in regard to the claim for a Footpath on the route B-C as there is insufficient evidence to support the making of an Order.

5. If the Committee accepts the recommendation of the Officer they are asked to authorise the confirmation of the Order if no representations or objections are received.
6. That it is understood that if objections are made, the Orders will be forwarded to the Secretary of State for determination. If this happens, subject to the 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.