

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 27 SEPTEMBER 2017

SUBJECT OF REPORT: MAYS LANE

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-C-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 A-B-C-D on the grounds that there is sufficient evidence that Bridleway rights have been established.

1. SUMMARY OF REPORT

This report considers part of an application which was made on the 11 February 1994. That application requested that a particular route, in the Parish of Puxton, should be recorded as a Byway Open to all Traffic. 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.

This report is based on historical documentary evidence. A Plan, EB/MOD29b, showing the route claimed A-B-C-D 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/MOD29b

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Applicants Evidence
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Appendix 6 – Consultation and Landowners Responses
Appendix 7 – Summary of Evidence and Conclusion
Document 1 – Applicants Application, Evidence, and Statutory Declaration
Document 2a, 2b, 2c - Congresbury, Wick St Lawrence & Puxton Enclosure Award 1814
Document 3 – Puxton Tithe Map 1840
Document 4 – Bartholomew’s revised 1/2” Contoured Map 1937
Document 5a & 5b – Finance Act 1910
Document 6a & 6b – Handover Map 1930
Document 7a & 7b - Definitive Map 1956

2. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public rights of way network and so contributes to 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 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 route A-B-C-D, which is not currently recorded on the Definitive Map it is necessary for the Committee to consider 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 in respect of each claimed section 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 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.

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. Due to the number of outstanding applications awaiting determination Officers of North Somerset Council, in conjunction with the Public 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 streamlined 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.

7. EQUALITY IMPLICATIONS

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

8. CORPORATE IMPLICATIONS

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

9. OPTIONS CONSIDERED

The options that need to be considered are:

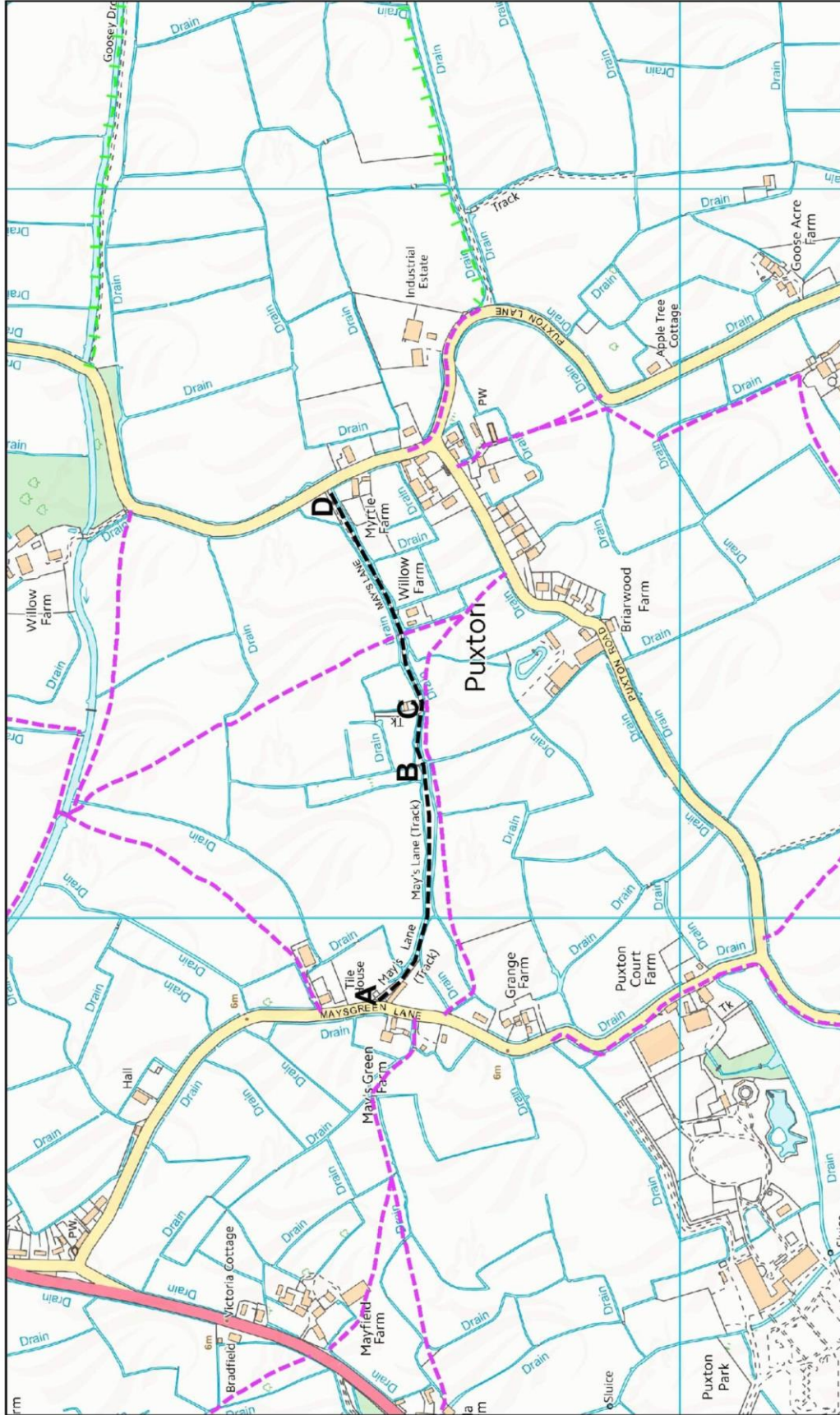
1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for the route A-B-C-D.

AUTHOR

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

**LOCATION PLAN
EB/MOD29a**



MOD29b - Mays Lane, Puxton
Claimed BOAT (Grid Ref: ST4063)

Public Rights of Way
 Castlewood, Tickenham
 Road, Clevedon, BS21
 6FW

Scale: 1:7000
 Drawn by: Lucy Roca
 Date: 28 July 2017
 Time: 11:46:56



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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"

The basis of the application in respect of the Byway Open to all Traffic is that the requirement of Section 53(3)(c)(i) has been fulfilled.

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

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

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

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

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

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

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

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

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 11 February 1994 from Woodspring Bridleways Association (“The Association”). The basis of this application was that a particular route should be recorded as a Byway open to all Traffic. Submitted with the application were details of documentary evidence that the applicant wished to tender as evidence and was considered to be relevant.

Listed below are the documents that the Association referred to:

1814 Congresbury, Puxton, Wick St Lawrence Inclosure Award Extract

1840 Puxton Tithe Map

1937 Bartholomew’s Revised 1/2” Contoured Map

Statutory Declaration By A E Tucker dated 5 July 1995

The above documents will be reported on in Appendix 3.

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

It should be noted that the Council has undertaken additional research into records that are held within the Council. These are detailed in Appendix 4 of this report.

2. The 1994 application claims that a Byway open to all Traffic should be recorded over a route known as Mays Lane which isn’t currently recorded on the Definitive Map. The claimed route is in the Parish of Puxton.
3. The route being claimed commences at the junction of the adopted highway on Mays Green Lane, point A and proceeds along an unadopted track bounded on both sides by hedgerow in a easterly direction along Mays Lane to a Gate at Point B. The route continues to the east joining onto a stony adopted highway, Point C and continues to the end at the junction of Puxton Lane (Point D). Therefore making the total length of this route 757 metres.
4. This claimed Byway open to all Traffic is illustrated as black dashed line on the attached Location plan EB/MOD29b (Scale 1: 7000).

The 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 route is illustrated on the Location plan attached EB/Mod29b.

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 a number of plans within the award. For this application, the route is shown in Plan C.

An extract is attached as **Document 2a**.

From Point D, the route is demonstrated as an enclosed track that follows a westerly direction. Just prior to Point C the track is then shaded red which is labelled XXV and continues through to Point A. This is described in the award as Bennetts Drove;

‘Bennetts Drove – One other Private Carriage Road or Drove of the breadth of twenty feet extending from the said last mentioned Road or Drove over Mays Green to an ancient Lane leading towards Goosey Way aforesaid called Bennetts Drove and numbered XXV on the said Plan C.’

This extract of the award is shown in **Document 2b**.

The wording of the Award relating to Private Carriage Road reads as follows;

‘And we the said Young Sturge and John Brown Do in and by this our award order and direct that the said several Private Carriage Roads and Public Footways hereinbefore particularly mentioned and directed to be set out in over and through the said Lands and Grounds hereby allotted and inclosed shall be and remain of the several and respective dimensions and breadths aforesaid that the said Public Footways shall be and remain to and for the use of all His Majesty’s Liege Subjects who may have occasion to us the same and that the said Private Carriage Roads and Bridges shall remain 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 mentioned to be by us 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 thereto go pass and repass in through upon and over the same Private Carriage Roads and Bridges either on Foot or Horseback or with Horses Cattle Carts and carriages loaded or unloaded at their and every of their free will and pleasure or otherwise howsoever when and as often as they or either of them shall think proper’

Additionally along this section of the claimed route, it is also numbered in red ‘326’ in the award this is described as;

‘Allotment of the right of pasturage in over and upon part of the aforesaid Drove or Way called Bennett Drove also hereinafter allotted in Exchange to the said Jonah Bennett.’

This statement leads to a presumption that this section of the claimed route, allotted to Jonah Bennett, only had private use for the owner, therefore implying there was no through route for the public between Point A & C. This also implies that this section of the route would need to be maintained by Jonah Bennett as stated in the preamble on the Award on Page 18;

And we the said Commissioners Young Sturge and John Brown do hereby further order and direct that such of the Private Carriage Roads and Bridges as are mentioned or referred to in the several Rates or Schedules hereinafter written and also the Gouts and drains crossing the same roads and by us made and placed there shall from time to time and at all times forever hereafter be repaired amended maintained new-made and kept in good and passable order and condition by the several and respective owners Tenants and Occupiers for the time being of all and singular the several Divisions and allotments of land hereinafter particularly mentioned to be allotted and set out at their expense and in proportion to their several and respective allotments plots pieces and parcels of land as the same are particularly adjudged and assessed hereinafter written called Congresbury Road Rate, Dolmoor Road Rate, Week St Lawrence Road Rate, Puxton Road Rate, and Crookwell Road Rate and each of which rates or schedules are divided into four separate columns – The First column contains the description of the roads and bridges The Second column contains the number in the said plans of the allotments chargeable with the repairs The Third column contains the names of the persons to whom the said allotments are awarded The Fourth Column contains the share each allotment is to contribute in proportion to the total amount of each rate.'

'And we the said Commissioners do hereby order and direct that such of the said roads hereinbefore set out as are not mentioned or referred to in the said several Rates or Schedules hereinafter written shall at all times hereafter be made passable and kept in repair by and at the expense of the owners or occupiers for the time being of the respective allotments through or adjoining which the said roads are set out.'

This Award extract is attached as **Document 2c**.

Puxton Tithe Map (1840) North Somerset Council

Up to the nineteenth century much land was subject to a church tithe, one tenth of the annual produce of the land had to be given to the church. This system was considered to be unfair by the tithe payers because the church benefited from improvements without sharing the costs of investment and also because of the difficulty with valuation. Consequently the Tithe Commutation Act was passed in 1836 under which all tithes were to be converted into a fixed money rent by an award made by the Commissioners appointed under the Act. It was an enormous task as it required all the land to be assessed for the value of its average produce and each field to be accurately measured and located for the permanent record.

Not all land is covered by a tithe map as some parishes were, for historical reasons, untithed, and in others much land had been freed of tithe by Inclosure awards or otherwise, the church sometimes being granted freehold land of equivalent value.

The applicant has also referred to this document within the original application. The Tithe Map relates to the Parish of Puxton.

The map shows the full length of the claimed route bounded on both sides but as a through-route with no obstructions. This route is depicted similar to other routes in the area which are now known to be public highways. It is reasonable to suggest that this route could have been used at this time as a through route to access adjoining allotments of land, as well as public use, due to no evidence of obstructions.

This map is attached as **Document 3**.

Bartholomew's revised 1/2" Contoured Map (1937) North Somerset Council

The applicant has referred to this document within the original application. This map relates to land within North Somerset. The claimed route is illustrated on the map but is not depicted in the same way as the adopted highways. However, this depiction is similar to other routes which have subsequently through historical investigation become Public Bridleways. These plans were produced to support motoring organisations therefore, the difference in depiction could indicate this was a route not suitable for mechanically propelled vehicles.

An extract of this plan is attached as **Document 4**.

Statutory Declaration by Mr A E Tucker dated 5 July 1995

This Statutory declaration was provided by the applicant, which relates the Drove ways within the Congresbury and Puxton Moors.

Sections 1 & 2 of his declaration refer to the claimed route of Mays Lane of which he has corresponded with an annotated map. He states that the drove was used as a short cut as it was un gated and could be used by members of the public on foot, horseback, or with machinery. Mr Tucker was born in 1907 and when he was 17 worked with his father at Mayfield Farm. His declaration clearly explains the use that he made of this route either going to or coming home from work. He claims that no one objected to the use of the route suggesting that it was accepted by all landowners.

Although this declaration does not state specific dates of when he used the routes it would suggest that the route was available for use around 1924.

The Declaration and map are included in **Document 1**.

Analysis of the Documentary Evidence

Further historical evidence was analysed by North Somerset Council based on the claimed route of the 1994 application. The following documents are considered most reliable in terms of the information they provide and whether they confirm or deny route status. The documentary evidence is listed in chronological order. The route is illustrated on the Location Plan EB/MOD29b.

Finance Act (1910) North Somerset Council

The Finance Act allowed for the levying of a tax on the increased value of land. All holdings or hereditaments were surveyed and recorded with an individual number on the Second Edition OS County Series Maps at 1:2500 scales. The map shows the lanes excluded from the surrounding hereditaments as they were not considered to be part of the adjoining properties. This could be because the ownership of them was not claimed, or because they were already not considered taxable. Penalties could also be levied against any landowner who misrepresented his landownership.

The Finance Act process was to estimate tax liability not the status of highways. The documents may be relevant where a deduction in value is claimed on the grounds of the existence of a highway. However, this route A-B-C-D is excluded from all hereditaments adjoining it, similar to other routes in the area some of which are public highways.

The map does apply the name of Mays Lane and appears to illustrate a barrier at Point A.

This map and an enlarged extract are attached as **Document 5a & 5b**.

Handover Map (1930) North Somerset Council

The purpose of these plans was to illustrate routes which were considered to be public highways maintained by the local authority. As can be seen routes are coloured according to their differing category, Red being major routes and blue/yellow as minor highways.

A section of Mays Lane is coloured yellow, which implies that it is a minor highway within the public highway network. This confirms that this section of the claimed route is maintained by the Local Authority, although at a far lesser standard than major routes. As a public highway, all manner of public access would be available.

Additionally, this plan is depicted in a similar manner to that shown on previous documents.

An extract and enlarged extract of this plan are attached as **Documents 6a & 6b**.

Definitive Map (1956) North Somerset Council

The Definitive Map was prepared by Somerset County Council in accordance with the requirements of the National Parks and Access to the Countryside Act 1949. Surveys carried out by the Parish Councils led to the preparation of Draft Maps. These were available to the public for inspection, and to enable representations to be made, which were then considered individually by the County Surveyor.

Following these decisions Somerset Council then had an obligation to produce the Provisional copy of the Definitive Map taking into account the outcomes of the Draft stage

and any amendments made which once again was advertised and open to objection. No record has been found to show that any further objection was made and the Definitive Map was produced on 26 November 1956.

This map illustrates the route in a similar manner to the previous maps discussed. There is an obstruction illustrated at Point A however the remainder of the route through Point B, C & D appear open and available.

An extract and enlarged extract of this plan is attached as **Document 7a & 7b**

Additional User Evidence

When the application was submitted in 1994 no user evidence forms were submitted to support the claim. As previously mentioned in Appendix 3, a Statutory Declaration was submitted by Mr A. E. Tucker. In addition to this an email was received on 16 June 2013 from Mrs N Robertson supplying evidence of the claimed route.

The content of the email states;

'I have been using the Mays Green Lane Footpath for over ten years. Two weeks ago when I used it someone had obstructed the footpath using sheep wire and metal fence post that had been hit into the ground hard, it was impossible to get them out, it was obviously put there for grazing animals, however unnecessary as there is a gate at either end of the grassy drove (if you enter the drove from the Mays Green end, Not the Puxton side). Also a bit further on, there is a tree that over the years has been leaning more and more over the lane I'm not sure who's responsible for the land I was under the impression it was owned by the diocese and it was public land or is it owned by the bungalow at the end.'

Taking into consideration this user evidence, the information contained indicates that the route was being used as a Footpath and only specifically mentions points A-B. In addition to this, the evidence also supports the existence of gates at both point A and B as witnessed when the site was visited.

Consultation and Landowner Responses

Consultation Responses

Pre Order Consultation letters were dispatched on the 3 July 2017 to local user groups, utility companies, known landowners and parties who had expressed an interest to the notices that had been placed on site. Additionally, correspondence that was held on Council files has also been taken into consideration.

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 order of byway open to all traffic at Mays Lane so long as the requirements are adhered to. The attached map shows the location of the 100mm diameter mains that will need vehicular access to for any proposed works.
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	Searches 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.
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 29 Cat 1- This shows Mays Lane (from T to R) as being claimed Cat 2- This shows Mays Lane correctly, but attention is drawn to the incorrect tile which refers to it being a DMMO map. Cat 3 – This shows as MOD 29a the route which the register shows as Claim 30. It also shows Mays Lane as Mod 29b.</p>

If the application is valid this route would win exemption from extinguishment under s67(1) NERCA by virtue of s67(2) (b) – but only if it was included on the Lo S at 2 May 2007. As to validity however the evidence relied on is (i) the Enclosure Award; and (ii) the relevant Tithe Map. A not on page 2 records 'Evidence Enclosed – Bartholomew's 1/2" map'. That suggests that copies of the full enclosure Award and Tithe Map were not supplied, on which we rely in asserting that the application was invalid

Letter dated 29th July 2017 Objection

I would like to make you aware of the situation regarding Mays Lane. The lane has a very poor surface over most of its length starting from Puxton Lane ranging from its hard to soft potholes. Throughout its length a mains water pipe is situated under the middle of the lane this takes mains water supply from Mays Green Lane through to Puxton Lane and down the road to Puxton. When this pipe was fitted soil from the excavation was spread over the lane, this means that in places where farmers have not stone to enable them to enter their gates, the lane is in wet weather very difficult to drive over unless a tractor or four wheel drive is used. On either side of this narrow lane are deep rhyes with balance pipes under the service of the lane to try and stop the rhyes on Puxton side of the lane in wet weather filling up and flooding over. The rhyes on either side of the lane feed directly in the Old Bridge River, Now this is where the problem starts during the winter months – Rhyes overflow, potholes fill with water and vehicles cause ruts and tracks along the lane. E.g. December 2016 tracks made it difficult for tractor to access field had to get contractor to fill deep tracks to make the lane safe for use.

Safety – It is important to consider the safety position with reference to Mays Lane, the lane is narrow and as previously pointed out has rhyes on either side in places thin hedges growing on the side. The bank of the rhyes is very soft due to the flooding in the winter and the amount of water carried by the rhyes this only goes to highlight the narrowness of the lane. It is also very important to consider what vibration from racing vehicles will have on the mains water supply pipe buried in the centre of the lane. As an aside but of interest in 1963 the Frost family who had farmed Grange Farm were planning to replace an old cottage ruin in a field adjoining Mays Lane with a farm workers bungalow for my wife who helped run the family farm. Plans were finalized when the council informed us that the Mays Lane was not suitable for any vehicle other than farm vehicles due to its poor service and no service vehicle would be allowed to use it. The council also informed the family that they would not be spending money on the upkeep of the lane. The plans were withdrawn and the council approved a sight on Mays Green Lane instead. I think this shows that the state of mays lane has not improved very much during the years. We are quite prepared to accept the lane as a Bridleway subject to the provisions that no gates are fitted to the end of mays lane adjoining Puxton lane, to a farmer with a tractor and an item of machinery on the rear of the tractor, trying to open locked gates with cars trying to get passed the tractor the external load would be very dangerous.

North Somerset Levels Internal Drainage Board No objection

Although the board has no objection to the proposals, the fact that large machinery will be using these lanes and droves 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 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 IDB prior to installation.

Openreach	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.
DM - Green Lanes Protection Group	Objection	<p>The applicant, Woodspring Bridleways Association, listed two items of documentary evidence in support of their application on their application form, the Congresbury, Puxton and Wick St Lawrence Inclosure Award and the tithe map. 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 award 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. Nor did they provide a copy of the tithe map, only a more modern map, annotated with their interpretation of the tithe apportionment. It seems to me, therefore, that because the 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 a copy of the original tithe map was not provided, this application does not qualify for exemption under section 67(3) of the NERC Act.</p> <p>You say in your letter of 18 August 2017 to XXXXX that Mod 29b is not recorded on North Somerset's list of streets. If this was the case on 2 May 2006, this application would not qualify for exemption under section 67(2)(b) of the NERC Act.</p> <p>As with Mod 29a, the absence of copies of the original inclosure award, original inclosure award plan and original tithe apportionment plan means that the applicant's transcription and interpretation of this evidence cannot be checked against the original documents, other than by 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 "<i>Local Act was passed in 1809</i>" (page 2), but the title of their transcript says that the "<i>Act passed 18 May 1814</i>" (page 5).</p> <p>The applicant says that the eastern section (R-S) of the route applied for (between grid references ST 407 635 and ST 403 634) is referred to in the inclosure award as "<i>ancient lane leading towards Goosey Way</i>" and is "<i>mapped as a pre-existing road</i>". But in the absence of copies of the inclosure award plan (and the tithe apportionment plan?) these statements cannot be checked. From a map supplied by the applicant it appears that their interpretation of the inclosure award is that the route numbered 25 in the inclosure award forms the western section (S-T) of the route applied for, but again this cannot be checked in the absence of a copy of the inclosure award plan. Route 25 is described in the inclosure award transcript as a private carriage road or drove "<i>extending from the said last mentioned Road [a carriage road or drove called Puxton Drove, numbered 24] over Mays Green to an ancient lane leading towards Goosey way aforesaid called Bennetts Drove and numbered XXV on the said Plan C</i>".</p> <p>I refer to my comments at point 4 above about the meaning of private carriage road in the Congresbury inclosure award. I also note that route 25 is distinguished from route 24 by the adjective private; this suggests that the inclosure commissioners considered that route 24 had public rights which route 25 did not have.</p>

Applicant	Information	We have spoken about this a lot The HA own up to the first gate on the Eastern end nearly half way!!!!. We have an affidavit from the Land owner saying he did not own the track etc. You have a copy of this. The Land Register confirms this. Its no doubt on the Tythe and IA
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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 route A-B-C-D, 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 Conclusion

Summary of Documentary Evidence

Taking all of the documents into consideration the majority of these documents illustrate the existence of the route A-B-C-D since 1814, however the fact that these are depicted does not confirm status.

The Enclosure Award of 1814 illustrates the existence of the claimed route A-B-C-D, however, only the section A-B-C is recorded in the Award. Through that process a Private Carriage Road called Bennetts Drove was listed as XXV. It is unknown as to why the remainder of the route C-D, was not mentioned, this could be because it was already regarded as part of the highway.

The Puxton Tithe process illustrates the route A-B-C-D as a through, unobstructed route providing connectivity between Puxton Lane and Mays Green Lane. This seems to support the claim that a through route was available for all to use.

The Bartholomew Map confirms the existence of the route A-B-C-D, however does not assist with status other than to show a differentiation from routes which were considered to be major highways.

Whilst the Finance Act plan illustrates the route A-B-C-D, it is excluded from the adjoining hereditaments. As other routes of various status are also excluded, this could suggest that this was a route for use between settlements.

At the time of the production of the Handover Maps in 1930, this confirms that the section between Points C and D was regarded as Public Highway (This may explain the exclusion within the Enclosure Award). This does not however, assist with the remainder of the route between Points A and B.

During the production of the Definitive Map in 1950 the route between A-B-C-D was not recorded on the Definitive Map. As can be seen from Document 8, a public footpath AX24/14 was recorded running to the south of the claimed route. The reason for this maybe that by 1950 when the survey was undertaken that this route had become blocked by gates thereby giving the impression of no access. These surveys were carried out by representatives of the Parish Council, who were local persons who knew the area.

There appears to have been some form of obstruction at Point A, whether this was a gate is unclear. The introduction of additional gates along the route having occurred over time.

Whilst this may have been a route capable of being used back in 1814 by all members of the parish for accessing other areas of the countryside, the only evidence which has been produced to support vehicular rights is that of the Handover Map in 1930, relating to the section C-D which is still recorded as maintainable by the local authority. In regard to the section A-B-C, no evidence has been produced or found to support that this route has established vehicular rights.

It would appear that over time the use of Bennetts Drove A-B-C has changed. At the time of the Enclosure Award in 1814, this route was set out as a Private Carriage Road which was

to be maintained by the owners/occupiers. This is a clear indication that at this time the route was considered not to be a public right of way.

The evidence submitted 'albeit minimal' appears to indicate that the full length of the route became capable of being used by the public for walking, horse riding, perhaps even with horse and carriage. It would appear that the introduction of gates along this route has occurred over time, however the statutory declaration submitted by Mr Tucker describes an ungated drove way which everyone used as a shortcut. His evidence describes riding a horse and leading another.

Taking all of the evidence into consideration, although sufficient evidence has been found to support the existence of all of this route, nothing has been submitted that would support a claim for a Byway Open to All Traffic. The evidence, however, does suggest a route which the public have enjoyed, which should be recorded on the Definitive Map.

Therefore, based on this documentary evidence, the Officer does not feel that the evidence supports the claim that this route should be Byway open to all Traffic but does feel that an Order should be made to support a Bridleway.

Summary of User and Consultation Responses

In Appendix 3, the applicant has referred to a Statutory Declaration by Mr Tucker in support of the claim. Mr Tucker who was born in 1907, seems to have commenced using this route when he was 17 (1924) and continued to work in the area until he retired (Officer suggesting this would be around the age of 65) in 1972. In his statutory declaration he recalls that as a child this was an ungated route continuing over his time of use when using the route as a 'shortcut' for driving horses and cattle as well as machinery. Mr Tucker made no mention to the route obstructing him of his use or shows no record of being challenged by landowners at any time.

The User Evidence referred to in Appendix 5 from Mrs Robertson dated 2013, confirms use of this route for 10 years prior to being obstructed by sheep wire and metal fencing. Her opinion being that these had been put there for grazing animals. She recollects the existence of gates at either end of the grassy drove (Point A-B). The existence of these gates had not previously stopped her from using this route.

However, from the consultation responses in Appendix 5, the objection from Mr & Mrs James indicates that the route has never been suitable for use of machinery due to the condition of the soil. This letter details their concerns in regard to vehicular access and the effect it would have both from impact on the land and safety grounds. Unfortunately, suitability and desirability are not matters which can be taken into consideration when determining this matter. However, Mr James does agree to the route being depicted as a Bridleway.

The Green Lanes Protection Group believe that this Application does not qualify for exemption under Section 67(3) of the NERC Act. They believe that the absence by the applicant of original copies of the evidence upon which they intend to rely should render this application as incomplete and not meeting the requirements of the Act.

Therefore, based upon the evidence from the landowner and the users, there is insufficient evidence to support the suggestion that this route should be recorded as a Byway Open to All Traffic, but this does support the suggestion of a Bridleway to be considered.

Conclusion

The legal test to be applied to this application is whether 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.

Having regard for the legal tests that should be applied in respect of the route A-B-C-D “does a route subsist or is reasonably alleged to subsist”. The historical evidence shows that a route has been evident on the ground since 1814 however very limited user evidence has been produced to support public rights having been established over it. Additionally, as the section of the route C-D is already considered as a minor highway, this section is classified to have public status.

As stated above it is felt by the officer that neither the documentary evidence nor the user evidence supports the route A-B-C-D being a Byway open to all Traffic. However, it is felt, that the documentary evidence together with the minimal user evidence, meet the legal test that ‘it is reasonable to allege’ that the route A-B-C-D has established some public rights and should be recorded as a Bridleway.

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-C-D as a Byway Open to All Traffic.
2. Whether the application should be denied in regard to the claim for a Byway Open to All Traffic on the route A-B-C-D as there is insufficient evidence to support the making of an Order.
3. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D as a Bridleway.
4. If the Committee accepts the recommendation of the Officer they are asked to authorise the confirmation of the Orders if no representations or objections are received.
5. 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.

