

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 27 SEPTEMBER 2017

SUBJECT OF REPORT: UPGRADING LITTLEWALL DROVE TO A BOAT.

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 do not authorise the making of a Definitive Map Modification Order for the route A-B on the grounds that there is insufficient evidence to show that Byway Open to all Traffic rights have been established.

1. SUMMARY OF REPORT

The report considers an application for a Definitive Map Modification Order under Section 53(5) of the Wildlife and Countryside Act 1981, requesting that parts of Footpath AX 16/23, and AX 16/24, in the Parish of Congresbury should be recorded as a Byway Open to all Traffic. 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 on historical documentary evidence. A Plan, EB/Mod30b, showing the route claimed 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/Mod30b

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Analysis of Applicants Evidence

Appendix 4 – Analysis of the Documentary Evidence

Appendix 5 – Consultation and Landowners Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – Application and Supporting Evidence

Document 2a & 2b – Congresbury, Wick St Lawrence & Puxton Inclosure Award 1814

Document 3 – Congresbury Tithe Map 1840

Document 4a & 4b – Somerset and Dorset Railway Records (Cheddar Valley & Yatton) 1864

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 application relates to routes which are currently recorded on the Definitive Map as Footpaths 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 this 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 and affected landowners have been contacted. In addition to this Congresbury and 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.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for the route A – B..

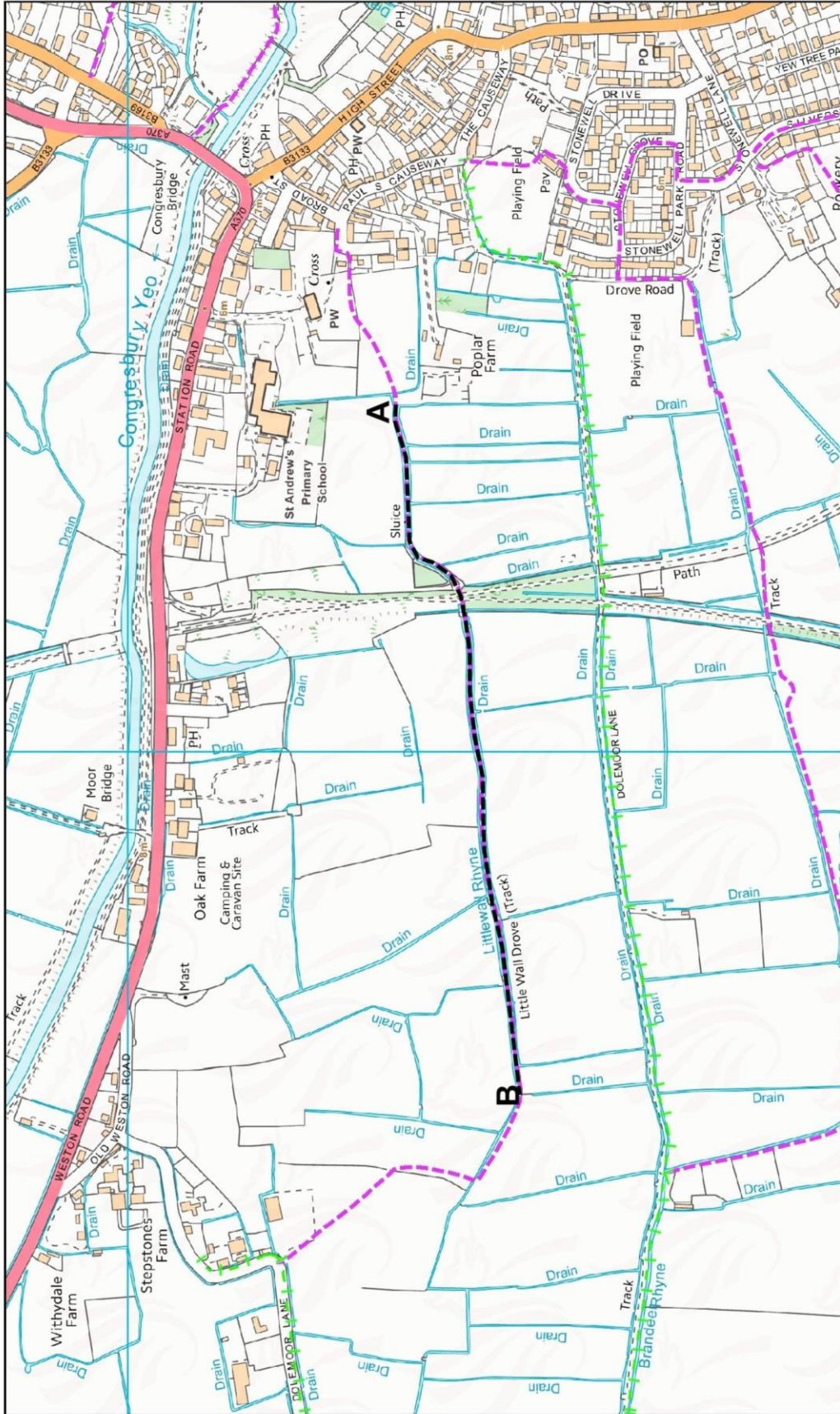
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BACKGROUND PAPERS

Public Rights of Way File Mod 30b

**LOCATION PLAN
EB/MOD30b**



North Somerset COUNCIL

MOD 30b - Littlewall Drive, Congresbury
 Claimed BOAT (Grid Ref: ST4363)

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

Scale: 1:6500
 Drawn by: Lucy Roca
 Date: 28 July 2017
 Time: 12:59:28

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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) (ii) 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 inclusion of Section 53(3) (c) (ii) is relevant in this case as parts of the claimed routes are currently recorded on the Definitive Maps as Footpaths.

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

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

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

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

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

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

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

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

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was originally 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 a list of documentary evidence that the applicant wished to tender as evidence and was considered to be relevant.

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

1814 Congresbury, Puxton, Wick St Lawrence Inclosure Award

1840 Congresbury Tithe Map

The information provided by the applicant together with the application form is attached and will be reported on in **Appendix 3**.

This matter is currently recorded on the Definitive Map Register as Mod 30b.

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 Byways open to all Traffic should be recorded over a route part of which are currently recorded on the Definitive Map as Footpath AX16/23 and AX16/24. The claimed routes affect routes in the Parish of Congresbury.
3. The route being claimed commences at Point A which is halfway along footpath AX16/23, where the track is enclosed at either side by a rhyne and proceeds in a westerly direction for 269 metres until it reaches its junction with the Strawberry Line. The route continues to proceed West across the Strawberry line along Footpath AX16/24 for a further 635 metres to Point B.
4. This claimed Byway open to all Traffic is illustrated as a bold dashed black line on the attached plan EB/Mod30b (scale 1:6500)

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/Mod30b.

Congresbury, Wick St Lawrence & Puxton Inclosure Award (1814) North Somerset Council (SRO Ref: Q/Rde 133)

The Congresbury, Wick St Lawrence & Puxton Enclosure Award Plan B illustrates the claimed route A – B as a bounded track. This track is only accessible by means of a route shown on the Enclosure Plan and detailed within the Award as No X1X – Broad Wall Drove.

“One other private Carriage Road or Drove of the Breadth of twenty feet extending from Horse Croft Lane to Little Wall called Broad Wall Drove and numbered X1X on the said Plan B.

The route A – B is labelled on the plan as Little Drove, however, this route is not listed in the Enclosure Award as a route set out as part of the Enclosure process indicating that it is a pre-enclosure route for the use of the land owners. .

An extract of the Enclosure Plan B and the extract relating to Broad Wall Drove are attached as **Document 2a and 2b**.

Congresbury Tithe Map (1840) North Somerset Council

This document covers the area of Congresbury over which the claimed route A-B passes. Although the scale of this plan is rather small it is still possible to see the claimed route depicted similar to that shown on the Enclosure Plan. It should be noted at each end A and B there is the depiction of a barrier indicating no further access.

The route A – B is illustrated as an enclosed route which runs alongside adjoining fields, however there is no indication to classify whether this was had public or private status.

An extract of this plan is attached as **Document 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 route A-B, 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.

Analysis of Additional Documentary Evidence

The Somerset and Dorset Railway 1864 (Cheddar Valley and Yatton) Somerset Record Office

The Cheddar Valley line was originally a Somerset & Dorset project promoted in 1863 for a line to Bristol via Wells and Yatton for which an Act was authorised on 14 July 1864. During this process plans were drawn up which illustrated the route of the railway line and an extent of deviation. Due to the use that was to be made of these plans they are a detailed record of the land over which the railway was to run. The book of reference associated with this plan tells us that the route A-B was dissected by the railway line and that Littlewall Drove was listed as number 60 and described as an Occupation Road. The Owner or reputed Owners were the Trustees of the Bristol Municipal Charities (previously Queen Elizabeth Hospital), John Breckinbridge, and Samuel Baker. It should be noted that a distinction was drawn between this route and the one numbered 79 which is recorded as Parish Road, this is the A370. The recorded information confirmed that the Highway Board for the District were the Owners. Furthermore this route was shown to be occupied by Thomas Young, Henry Lawrence, Nathaniel Bowring, Thomas Lawrence and William Poultney.

This plan illustrates that a route was in existence at this location and that it was capable of being used but it should be noted that it was called an occupation road which implies that it was for the use of the landowners. In addition, it would be reasonable to suggest that at this location unmanned gates would have been erected which were capable of being opened by anyone but would have stopped any straying animals from gaining access to the railway.

An extract of the plan is attached as **Document 4a and 4b.**

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. It should be noted that these plans are the working documents rather than the final versions which would normally be held at the Record Office at Kew. It has not been possible to obtain any other version.

The Finance Act Plan X.12, illustrates part of Congresbury parish and demonstrates the claimed route A-B. In comparison to older maps, this plan shows the railway line which cuts through the route labelled as Littlewall Drove. It would be reasonable to presume that a bridge or gate would have been needed for access to either side of the railway line.

What is clear is that the majority of this route A – B is included in adjoining hereditaments. This would seem to indicate that this route was not considered as public highway.

This plan and an extract of this plan is attached as **Document 5a and 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. It should be noted that the claimed route is illustrated on the map similar to that shown on the Enclosure and Tithe maps

In addition the route is not coloured in any way suggesting it was not believed to have any highway status, indicating that this route was for private use only to access the adjoining fields along the length of the claimed route A - B.

This document 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 the claimed route A -B as part of a longer route which connects the village of Congresbury with the outskirts of the village. That route is Footpath AX16/23 which commences near to the church in Congresbury and proceeds across fields to Point A. It continues along Littlewall Drove to the railway line where it then becomes AX 16/24. The footpath continues along Littlewall Drove to Point B before continuing across the fields to meet Dolemoor Lane and Bridleway AX16/21. It should be noted that Bridleway AX16/21 has only recently been legally recorded on the Definitive map, prior to that it was recorded as a footpath.

No evidence has been found to suggest that any of these routes received any such objection so it is presumed that all those consulted agreed that they should be a footpath which is how they are currently recorded. However, the fact that a route is recorded on the Definitive Map as a footpath does not preclude the route being of a higher status than that recorded.

An extract of the Definitive map for the area is attached as **Document 7a & 7b.**

Consultation and Landowner Responses

Consultation Responses

As part of Council's process, letters of consultation were sent out to Statutory Undertakers, Landowners, User Groups and interested parties on 3 July 2017. A table of the responses received are outlined below;

Name	Objection or Support	Comments
Bristol Water	No Objection	We confirm that we have no objection to the proposed stopping up Byway Open to all Traffic order at Littlewall Drove, Puxton Moor
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	Cadent and National Grid have no objection to these proposed activities.
Atkins Global	No Objection	We refer to the below or attached order and confirm that we have no objections.
Mr B A Sweet	Objection	<p>I object to this application for the following reasons;</p> <p>Firstly, I bought Oak Farm in May 1966 and Littlewall Drove has never been used for any horses or traffic to the present date. We do recognise the designated footpath has been used for pedestrians, although the gate from the Strawberry Line onto Littlewall Drove has been locked for over 50 years.</p> <p>In the 1980s, I purchased the land south of the Littlewall Drove and immediately north of Dolemoor Lane. Dolemoor Lane is the current bridleway and runs one field south and parallel to Littlewall Drove. Therefore, a second bridleway is totally unnecessary.</p> <p>Secondly, my concerns are that I have beef cattle grazing on my land both sides of Littlewall Drove/ Rhyne. I use the Drove on a daily basis using interconnecting gates so that the cattle can obtain water. These heavy steers, mostly continental, are bought in for grazing and it would be very dangerous to have access gates on to the busy cycle way/footpath known as the Strawberry Line. The North Somerset Drainage Board notify me twice a year to clean out Littlewall Rhyne via access through the farm, as the gateway from the Strawberry line is in accessible.</p> <p>Lastly, may I add for the preservation of the local wildlife, that since the public opening of the Strawberry Line, the wildlife in the surrounding area has declined rapidly and Littlewall Drove is one of the only droves left for the wildlife to survive?</p>
Congresbury Parish Council	Objection	The Parish council have no objection to the byways 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. In addition, these tracks lead directly onto the Strawberry Line; designation must not include mechanically propelled vehicles apart from

authorised farm vehicles as this would it is believed encourage access onto the Strawberry Line which is for recreational cycling and walking only. Any unauthorised vehicle access would be both a safety concern for those using the Strawberry Line and damage the surface of the track.

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 drives 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 gate that re to be provided should be wide enough to allow the passage of the IDBs machinery. The board would also recommend that any proposals for such works be discussed with the IDB prior to installation.

Green Lanes
Protection Group

Objection

This Organisation responded upon a number of Modification claims. The following has been extracted from that communication because of its relevance to this report.

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.

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 "*Local Act was passed in 1809*" (page 2 – Applicants evidence Document 1), but the title of their transcript says that the "*Act passed 18 May 1814*" (page 5 – Applicants evidence Document 1).

The applicant has provided a modern map marked with their interpretation of the inclosure award. However this interpretation indicates that the route applied for (between A and B on the map drawn by Lucy Roca on 28 July 2017) was not set out in the inclosure award, although the applicant considers that routes 19, 45 and 46 led from it, and that 45 continued the line of the current public footpath between A and B. Their transcript of the inclosure award describes these routes as:

“One other private carriage road or drove of the breadth of 20 feet extending from Horse Croft Lane to Little Wall called Broad Wall Drove and numbered XIX on the said Plan B”

“One other private carriage road or drove of the breadth of 12 feet extending from the ancient gate leading into Flood Ditch to an allotment set out to Henry Shepson numbered XLV on the said Plan B

One other private carriage road or drove of the breadth of 12 feet extending from the ancient gate leading into Flood Ditch to an Old Inclosure belonging to Joseph Coombe numbered XLVI on the said Plan B”

These descriptions do not give any information about the status of the route A-B at the time of the inclosure award. With regard to route 45, which appears to continue the route applied for, I refer to my comments at point 4*(see below).about the meaning of private carriage road in the Congresbury inclosure award.

I note that the applicant interprets the tithe apportionment as showing A-B (but not the public footpath continuations at either end) as a public road. I point out that the applicant interprets another route to the north-west as a public road, but that this route (named on modern OS mapping as Dolemoor Lane) is now a public bridleway. This suggests that not all roads maintainable by the parish at the time of the tithe apportionment had public vehicular rights.

Also note that the route applied for is crossed by a disused railway near its eastern end. The railway plans and book of reference should provide evidence of the status of the route as perceived by the railway surveyor.

*4. 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).

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.1814, however the fact that this is depicted does not confirm status.

The Enclosure Award of 1814 illustrates the existence of the claimed route A-B as a pre-enclosure route. Through that process a Private Carriage Road called Broad Wall Drove was listed which provided access to Littlewall Drove. The Enclosure Plan clearly illustrates that this was a Drove solely for the use the adjoining landowners not providing a through route in either direction.

The Congresbury Tith process illustrates Littlewall Drove similar to that of the Enclosure Award and has not depicted anything upon this Drove which would suggest either that it was used by the public or maintained by the Waywardens.

Whilst the Finance Act plan illustrates the route A-B, it is contained within adjoining hereditaments copies of which have not been obtained. This continues to support previously mentioned plans that Littlewall Drove was not a through route for a byway open to all traffic. This is shown in a similar way on the Handover Map of 1930.

During the production of the Definitive Map in 1950 the route between A and B was recorded on the Definitive Map as footpaths, the reason for this is unclear but nothing has been found to suggest that this classification was incorrect. These surveys were carried out by representatives of the Parish Council, who were local persons who knew the area.

Whilst these may well have been routes used back in the 1800 by all members of the parish for accessing other areas of the countryside no evidence has been produced or found to support that these routes have established vehicular rights and that they should be recorded as Byways open to all Traffic.

Taking all of the documentary evidence into consideration there is no evidence to show that this route has ever established public vehicular rights or even Bridleway rights, only private rights by the landowners.

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.

Summary of Consultation Responses

Based upon the submissions received, one landowner has responded detailing his knowledge since 1966. In addition, an extensive response has been received from the Green Lanes Protection Group, challenging the application.

The landowner has recalled never having seen any horses or traffic on this route. He has provided detail of the gate onto Littlewall Drove from the Strawberry Line being locked for over 50 years. As a landowner with a herd to look after it is reasonable to assume that he has been on this land most days.

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.

Conclusion

This application affects a route which is already recorded on the Definitive Map as Footpath AX16/23 and AX16/24. 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.

In this case it is thought that the documentary evidence is insufficient to challenge the current status of the route A-B. It is felt by the officer that the documentary evidence does not support the route being a Byway open to all Traffic.

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.
2. Whether the application described above should be denied as there is insufficient evidence to support the making of an Order.