

# North Somerset Council

**REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE**

**DATE OF MEETING: 15 NOVEMBER 2017**

**SUBJECT OF REPORT: CLAIMED BYWAY OPEN TO ALL TRAFFIC  
BLACKBERRY LANE**

**TOWN OR PARISH: WESTON-IN-GORDANO**

**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 and C-F-E 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

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 submitted by Woodspring Bridleways Association which was made on the 25 October 2005. That application requested that two routes currently recorded on the Definitive Map as Footpath LA18/4 and Footpath LA18/5, and an unrecorded route in the Parish of Weston-In-Gordano, should be recorded as Byways 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.

The claimed routes are illustrated on the attached Location plan. The route A-B is currently recorded as Footpath LA18/4, B-C-D is recorded as Footpath LA18/5 and the route C-F-E is an unrecorded route. This report is based on historical evidence and some limited user evidence. The historical and user evidence will be presented as a whole.

## Location Map

**Appendix 1** – The Legal Basis for Deciding the Claim

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

**Appendix 3** – Applicants Evidence

**Appendix 4** – Analysis of Additional Documentary Evidence

**Appendix 5** – User Evidence

**Appendix 6** – Consultation and Landowners Responses

**Appendix 7** – Summary of Evidence and Conclusion

**Document 1** – Route A-B-C-D

**Document 2** – Route C-C-F-E

**Document 3** – Bramble Lane and Somerset’s List of Streets

**Document 4** – DETR Letter dated 24 August 1998

**Document 5** – Weston-In-Gordano Enclosure Award 1801

**Document 6&7** – Weston-In-Gordano Tithe Map and Apportionment 1839

**Document 8** – Handover Map 1930

**Document 9** – Definitive Map 1956

**Document 10** – User Evidence Analysis Table

**Document 11** – Tabular User Evidence Route A-B-C-D & C-F-E

**Document 12** – Tabular User Evidence Horse Use Route A-B-C-D

**Document 13** – Tabular User Evidence Horse Use Route C-F-E

**Document 14** – Letter from Mrs M Fiske dated 25 November 1994

**Document 15** – Statutory Declarations from G Gale & N Jones dated 26 October 1994.

## 2. POLICY

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

## 3. DETAILS

### Background

#### i) The Legal Situation

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

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

#### ii) The Role of the Committee

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

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the 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 two routes which are recorded on the Definitive Map and one sections which is unrecorded it is necessary for the Committee to have regard to two legal tests.

1. Section 53 (3)(c)(ii) relating to the sections recorded as Footpaths LA18/4 and LA18/5 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 tests have 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 affected landowners have been contacted. In addition to this Weston-in-Gordano Parish Council, Local members, interested parties and relevant user groups have also been included. Detail of the correspondence that has been received following these consultations is detailed in **Appendix 6**.

## 5. FINANCIAL IMPLICATIONS

At present the council is required to assess the information available to it to determine whether there is sufficient evidence to support the application. There will be no financial implications during this process. Once that investigation has been undertaken, if authority is given for an Order to be made then the Council will incur financial expenditure in line with the advertisement of the Order. Further cost will be incurred if this matter needs to be determined by a Public Inquiry. These financial considerations **must** not form part of the Committee's decision.

### Costs

Existing Revenue Budget

### Funding

Existing Revenue Budget

## **6. LEGAL POWERS AND IMPLICATIONS**

Section 53 of the Wildlife and Countryside Act 1981. 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, within 12 months of receipt. Failure will result in appeals being lodged and possible directions being issued by the Secretary of State.

## **7. RISK MANAGEMENT**

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.

## **8. EQUALITY IMPLICATIONS**

No - 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.

## **9. CORPORATE IMPLICATIONS**

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

## **10. OPTIONS CONSIDERED**

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for each of these routes.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for any one or all of these routes.
3. Whether the evidence supports the making of a Definitive Map Modification Order for Bridleway status.

## **AUTHOR**

Elaine Bowman, Senior Access Officer Modifications, Access Team, Natural Environment  
Telephone 01934 888888

**BACKGROUND PAPERS:** - Public Rights of Way File Mod 34

## 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 Byways Open to all Traffic is 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

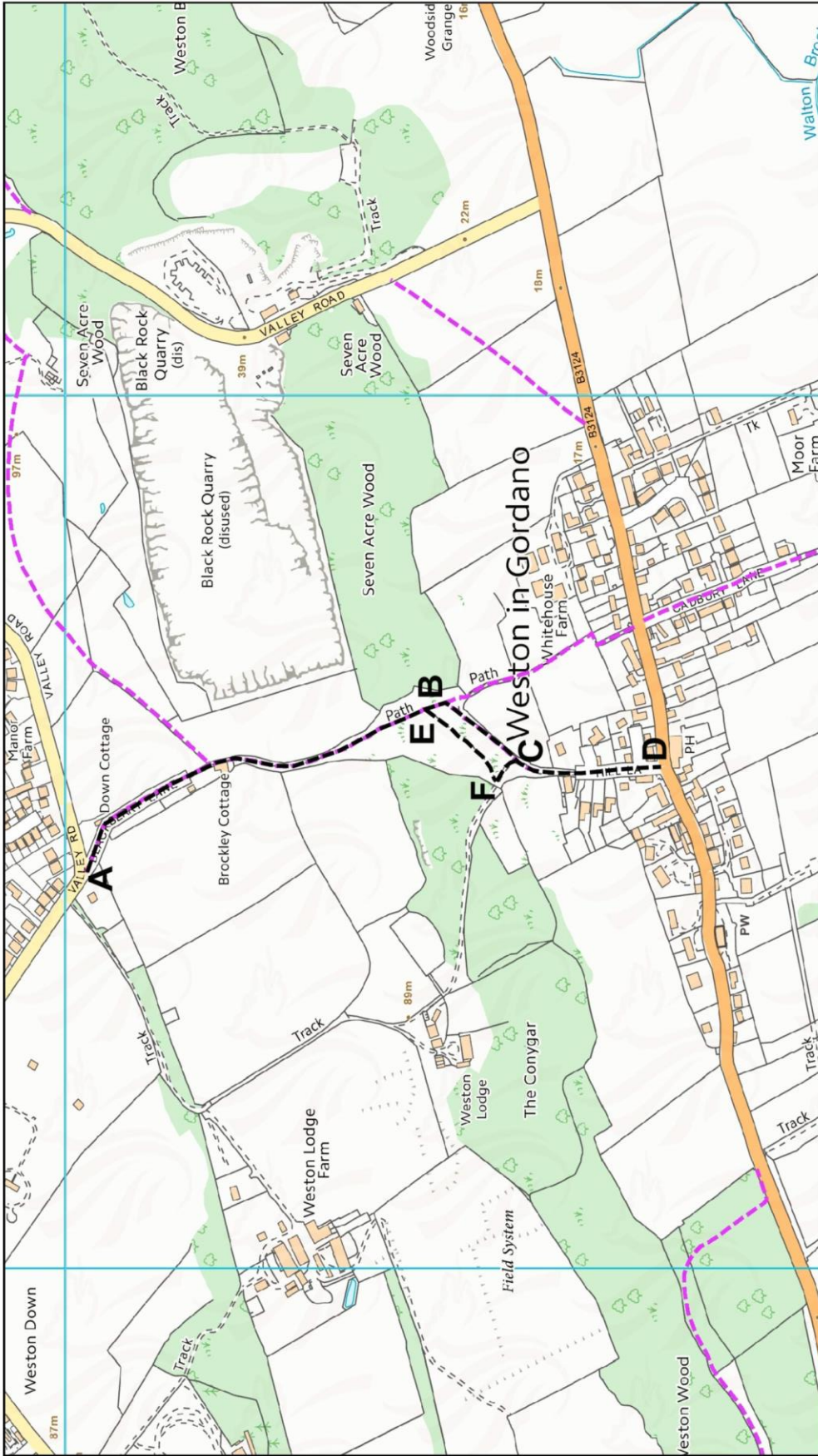
(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

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 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.

# LOCATION PLAN



**MOD 34 - Blackberry Lane**  
 Weston-in-Gordano (Grid Ref: ST4474)



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

Scale: 1:6000  
 Drawn by: Lucy Roca  
 Date: 26 July 2017  
 Time: 09:38:32

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## History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 25 October 2005 from Woodspring Bridleways Association (“The Association”). The basis of this application was that two routes namely A-B-C-D and C-F-E shown on the attached Location Plan should be recorded as Byways open to all Traffic. The applicant listed upon their application 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:

- Brambles Lane and Somerset’s List of Streets
- DETR letter dated 24 August 1998
- List of 24 User Evidence Forms and two affidavits.

The above documents will be reported on in **Appendix 3 & 5**.

This matter is currently recorded on the Definitive Map Register as Mod 34.

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

2. The 2005 application claims that Byways open to all Traffic should be recorded over the routes A-B which is recorded on the Definitive Map as Footpath LA18/4 and B-C-D which is Footpath LA18/5. In addition to this the route C-F-E is currently an unrecorded route. The claimed routes affect routes in the Parish of Weston-In-Gordano.
3. The first route being claimed commences at the junction of Blackberry Lane and Valley Road, Point A, and proceeds along an unadopted track, known as Blackberry Lane and proceeds in a southerly direction for a distance of approximately 504 metres to a junction with Footpath LA 18/5, Point B. The route then continues in a south-westerly direction along Footpath LA18/5 for a distance of 106 metres to Point C, then continues to the south to Hill Lane ending at the junction of the B3124 (Point D) for a further 170 metres. Therefore making the total length of this route 770 metres.
4. The second route being claimed commences 27 metres north of Point B on Footpath LA 18/4 (Point E) where the route proceeds in a south-westerly direction for 114 metres to Point F. The route then proceeds in a south easterly direction for 32 metres to Point C. Therefore making the total length of this route 146 metres.
5. These claimed Byways open to all Traffic are illustrated as bold broken lines on the attached Location Map (scale 1:6000) as A-B-C-D and C-F-E.



## Applicants Evidence

The claim is based on documentary evidence suggested by the applicant and User Evidence. The routes are illustrated on the Location Plan attached EB/Mod34.

It should be noted that the applicant has been confused by their selection upon the application form by selecting section b) for adding a route to the Definitive Map. However the intention is clear from the description given that what is being requested is the upgrade of a route already recorded (by quoting that routes reference number) on the Definitive Map as footpath to Byway Open to all Traffic (A-B-C-D **Document 1**) In addition to this an unrecorded route is also claimed (C-F-E **Document 2**)

### Brambles Lane and Somerset's List of Streets

The Applicant has referred to a document relating to Bramble Lane and Somerset's List of Streets. This document describes the history of classifications for Private and Public highways within Somerset. Unfortunately the document that was submitted with the application was unclear to supply an electronic copy within this report, so a revised copy has been created by North Somerset Council, which can be located as **Document 3**.

### DETR Letter Dated 24 August 1998

The Applicant has also referred to this letter from the Department of the Environment Transport and the Regions (DETR) dated on 24<sup>th</sup> August 1998, which corresponds with the previous document regarding 'unclassified roads' in relation to the 1980 Highways Act, 1929 Local Government Act, and the Wildlife and Countryside Act 1981.

A copy of this letter can be located as **Document 4**.

### Trails of Gordano

An additional piece of evidence has been submitted by the applicant. This is a walking leaflet produced by Woodspring dated circa 1991. This is described as a walk around the village and across Middle Hill with wonderful views of the Gordano Valley. This document starts on the main B3124 using roads and fields to reach Valley Road. It then reads as follows:

*Continue on Valley Road until you reach the public footpath on your left. Cross the road and climb the hill towards the ruins of Manor Farm (6). The farmhouse, which is about 200 years old, was bought by the Quarry owners when they were planning to extend their activities. Jack Mitchell vacated the farm with his wife and 13 children but the plans came to nothing and the building has gradually deteriorated over 40 years. The well can be seen to the left of the house. The old steps lead to the cellar where the Mitchells sheltered during World War Two air raids and the build to the left of the house was a dairy.*

*Follow the footpath until it reaches the gate. Do not go through the gate but take the path to the right towards a small opening. Cross the field to the left had hedge towards a stile. Once over the stile, bear left along the field edge towards the white cottage. Climb over the stile. You are now standing in the ancient bridle path or 'green way' running between Portishead and Weston in Gordano. The cottages were farm workers dwellings. Continue along the bridle way towards Middle Hill (7).*

## **Analysis of Additional Documentary Evidence**

The claim submitted by the applicant has made no reference to historical evidence being relevant to this case, relying on the User Evidence which has been submitted. However in line with the decision recently taken by the Public Rights of Way Sub Committee minimal Historical Evidence has been looked at to assist this report.

The documentary evidence is listed in chronological order.

### **Weston-In-Gordano Enclosure Award (1801) Somerset Record Office Ref: DD/PN/41**

The map attached to the Enclosure Award presented in the year 1801, illustrates the area of the claimed routes within Weston-In-Gordano. Initially known as Blackberry Lane, the map labels it as Down Lane and is shown from Point A.

The land over which the claimed routes run is illustrated as open land known as Middle Hill, but it does not illustrate the claimed routes, just the area within which they would lie. This openness continues through to the road now known as Hill Lane. This land numbered 137, outlined in pink with the name written upon of J.N. Sanders and has an area of 3 acres 3 roods and 4 perches. It is reasonable to assume that this area of land provided access to the adjoining fields but also illustrates the availability of a through route. This information assists with the existence of this route but not of its status. No further information is available at this time.

An extract of the Enclosure award is attached as **Document 5**

### **Weston-In-Gordano Tithe Map and Apportionment (1838) Somerset Record Office Ref: D/D/Rt/M/17 and D/D/Rt/A/17**

The Tithe Map for Weston-In-Gordano illustrates the route of Blackberry Lane as a bounded route similar to that shown on the Enclosure Plan. We are unable to identify the points of the routes being claimed. Instead it shows the region as an open space. Additionally, this route is numbered on the map 40 to which with reference to the Tithe Apportionment, states that this particular route/land is owned by Philip John Miles Esquire but is occupied by John Davis, to which the land is used as pasture. It is reasonable to suggest that this route was accessible by the owners and perhaps the adjoining landowners.

An extract of the Tithe map and the relevant Apportionment are attached as **Documents 6 and 7**.

### **Finance Act (1910)**

Unfortunately I was unable to access the map to present the claimed route of Blackberry Lane, so I cannot produce an analysis.

### **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 main routes, blue being secondary routes and yellow minor highways.

This Handover map illustrates the area of Weston-In-Gordano and the claimed routes A-B-C-D and C-F-E. Points A to C is annotated on the map with the letters FP (Footpath), which is illustrated by dashed lines. This is consistent with the routes currently recorded on the Definitive Map as part of Footpath LA 18/4 and LA18/5. Points C-D are coloured yellow on the map which indicates that this section of the route is a minor highway.

There is not any evidence identifying the route C-F-E.

An extract of this plan is attached as **Document 8**.

### **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 LA18/4 commencing at its junction with Nightingale Valley (now known as Valley Road) and proceeding along Blackberry Lane between points A-B. Footpath LA18/5 then continues from Point B to Point C to meet the adopted highway Hill Lane C-D. This map shows no indication of a route over the sect C-F-E.

An extract of this plan is attached as **Document 9**.

### User Evidence

#### User Evidence Forms

According to our records five User Evidence Forms were submitted to North Somerset Council in 1998 prior to the formal application being submitted in 2005. Since that date additional User Evidence Forms have been submitted making their total of 32. In order to access the information contained within them a number of tabular documents have been produced and evaluated.

**Document 10** details the information given on the 32 User Evidence Forms. This includes the period of time, extent and method of use, the reason for the use and the believed status. These users have stated that the majority of use was for recreational purposes. In addition to this the frequency of use varied between 20 and 600 times a year. Eight of the users have made reference to the route C-F-E being allowed by permission of the Middle Hill Management Company.

**Document 11** is a tabular graph illustrating the periods of use made by each of the users. This graph relates to all manners of usage whether walking cycling or riding a horse. This illustrates that either of these routes has been used since 1914 (E7), 23 of these users have used one or both of these routes for a period of 20 years or more. The breakdown of information shows that between 1930 and 1940 these routes were used by 10 people, 1940 and 1950 these routes were used by 9 people, 1950 and 1960 these routes were used by 13 people, 1960 and 1970 these routes were used by 15 people, 1970 and 1980 these routes were used by 23 people, 1980 and 1990 these routes were used by 25 people and between 1990 and the completion of the user forms in 1998 these routes were used by 26 people. This information can be further broken down.

**Document 12** is a tabular graph illustrating the period of use made on the route A-B-C-D by horse riders. The earliest use was in 1925 (E29), 15 of these users have used this route for a period of 20 years or more. The breakdown of information shows that between 1930 and 1940 this route was used by two people, 1940 and 1950 this route was used by three people, 1950 and 1960 this route was used by six people, 1960 and 1970 this route was used by seven people, 1970 and 1980 this route was used by 13 people, 1980 and 1990 this route was used by 15 people and between 1990 and the completion of the user forms in 1998 this route was used by 15 people.

**Document 13** is a tabular graph illustrating the period of use made on the route C-F-E by horse riders. The earliest use was in 1948 (E14), 5 of these users have used this route for a period of 20 years or more. The breakdown of information shows that between, 1940 and 1950 this route was used by one person, 1950 and 1960 this route was used by three people, 1960 and 1970 this route was used by two people, 1970 and 1980 this route was used by five people, 1980 and 1990 this route was used by seven people and between 1990 and the completion of the user forms in 1998 this route was used by seven people.

As can be seen from these forms the information given on each one gives a clear indication that these routes had been used until 1998 by horse riders.

In addition to the information on the above documents the applicant has also submitted one letter of support and two Statutory Declarations. The letter (written for Mrs M Fiske) details

her knowledge of the area and the use that was made of the common by her daughter on horseback. A copy of this letter is attached as **Document 14**.

The first Statutory Declaration by Gertrude Gale dated 26 October 1994 provides recollection of the use that she had enjoyed over this area of land from being a small child (born in 1915). This recollection also mentions the use of the route (presuming A-B-C-D) in a pony and trap. This declaration is accompanied by a plan which illustrates the route A-B-C-D.

The second Statutory Declaration by Norah Jones dated 26 October 1994 again provides recollection of the use that was made when as a child taken out by her parents in a pony and trap. This declaration is accompanied by a plan which illustrates the route A-B-C-D. Both of these documents are attached to this report as **Document 15**.

## **Conclusion**

The submission of 32 User Evidence Forms covering a period from 1914 to 1998 where usage by walkers and horse riders is between 20 times and 600 times a year should be regarded as strong evidence that use has been made by the public at large.

No recollection has been made on these forms of the route being obstructed or unusable. However information has been supplied that the Middle Hill Management Group has given permission for the route C-F-E to be used, but it is unclear as to the date that permission commenced, some reference has been made to 18 and 25 years ago.

It is unclear as to what prompted the applicant to submit the application in 2005; there is however a telephone note on file dated 9 September 1998 which records that concerns have been expressed that attempts are being made to stop horse use. This information would account for the User Evidence Forms being dated 1998. No evidence has been given as to what action called the use of these routes into question. It should be noted that these User Evidence Forms only refer to bridleways and footpaths, no option of choice for the route to be a Byways Open to All Traffic.

Normally in the absence of an action which called the route into question it would be taken that the submission of an application was the date of challenge, in this case 2005. However the file note dated 1998 provides an indication and none of the user evidence forms are dated after 1998. Therefore accepting the date of challenge for the route A-B-C-D was 1998 the information detailed in **Document 11 to Document 13** indicates that use was being made of this route by persons on horseback. In addition to this the Statutory Declarations also provide minimal evidence of the use of pony and traps. Bearing all of this in mind the period to look at is 1978 – 1998.

## Consultation and Landowner Responses

A pre-order consultation letter was sent to adjoining landowners and interested parties on the 26<sup>th</sup> 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

<b>Name</b>	<b>Objection or Supporter</b>	<b>Comments</b>
Bristol Water	No Objection	We confirm that we have no objection to the proposed Modification Order.
Atkins Global	No Objection	We refer to the attached order and confirm that we have no objections
National Grid	No Objection	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.
Mr H Rushton	Objection	I formally object to the proposed changes. I own Weston Lodge, and our driveway runs from the top of the hill to the main road. With this email please find confirmation that it is not an unadopted track. In particular, the area C to D marked on the map belongs to me and I have various versions of the deeds, over a period of time, which confirm the same. I will get in touch of Land registry to make the necessary amendment made. We would strongly object to open it up to 'all traffic' and would take on a legal case against this. Legal aside, as you leave our private driveway and head up to the common the 2 x pathways are very steep, motorised vehicles and horses would present significant danger to the public and damage to natural environment. Motorised vehicles and horses have never used the areas ABCDE marked on the map and there is no precedent to change the current permissions.
Mr I Borland	Objection	I have been forwarded a copy of the above by our Parish Clerk. As a nearby resident I use the route in question as a pedestrian regularly. I am very concerned about this proposal which would seem to allow motorised vehicles (which I assume could include motorbikes and even cars), cyclists and horses to use the route. Even as a layman, it seems obvious that ALL of these would physically damage the ground. I understand that Middle Hill Common is a fragile example of a fast disappearing type of terrain. It seems that is would be irreparably damaged by such use. It would in particular make the hill attractive to 'trail bikes' which are known to cause widespread damage in such circumstances, to say nothing of noise pollution. I therefore object on the strongest terms to the proposal.
Mr J Harrison	Objection	I write as an individual living in Weston in Gordano who has been involved in the management of Middle Hill Common for 25 years. Middle Hill Common is one of the few remnants of limestone grassland left in the area. It has a rich botanical list, provides habitat for marbled white butterflies and the Nationally Scarce rufous grasshopper. It is common land, a local nature reserve and is a nature reserve managed by the Avon Wildlife Trust. The PROW Footpath (LA18/4) that follows the eastern boundary down from Blackberry Lane then turns SW at the southern boundary to join the track from Western Lodge to Hill Lane in Weston in Gordano has been a permissive Bridleway for well over 25 years. It has been little used as such in that time because as an experienced rider told me in her opinion, it is quite hazardous going up the hill and positively dangerous coming down. There

		<p>seems little appetite locally to change its status as far as I'm aware. The other PROW (LA18/5) would be even more challenging as a bridleway because it has a short section of very steep native bedrock which can be extremely slippery when wet. (Byway Open to All Traffic) This cannot be a likely outcome as it would involve serious engineering work to make it possible which would be forbidden by the laws regulating common land. It also would detract seriously from the Common's values as a nature reserve.</p>
Openreach	No Objection	<p>Openreach does not appear to have a 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/landowner is aware of this information; if you have any queries regarding this matter please do not hesitate to contact.</p>
Mr D Lewis	Objection	<p>I am a resident of Weston-in-Gordano, having lived here for the past 40 years. It is both unnecessary and undesirable to modify the Definitive Map in the way proposed. Middle Hill Common is a nature reserve managed by Avon Wildlife Trust. For all the time I have known it, it has also been a quiet and peaceful place much enjoyed by local residents for precisely the atmosphere of calm. The route you identify would be completely impassable to four-wheeled motor vehicles (Although vandals did manage to drive a stolen car almost to the bottom of the common some years ago). However, there is a serious risk that motorcyclists would begin to use them, as a challenge to their skills. This would entirely destroy the character of the site, as well as damaging the fragile and important ecosystem which exists there. I feel sure that the wildlife trust will make a submission which will address this issue. You mention maps going back to 1801. I need hardly point out that this predates the era of motorised transport with the exception of a very few primitive experimental vehicles. There can have been no concept at that date of the present state of development of cars, and particularly of motorbikes. Thus the historic maps have no relevance. The prime movers of this proposal appear to be Woodspring Bridle Group, which lobbies on behalf of the horse riding community. I am surprised that they are promoting a Byway Open to All Traffic, which is unnecessary for their purposes and almost certainly headed for refusal. Surely a proposal for designation as a bridleway would be more appropriate, though I would anticipate that the Wildlife Trust might have concerns even about that. I urge you to reject this proposal.</p>
Mr & Mrs Wait	Objection	<p>With regard to your letter about the proposed change to the footpath which runs through our property from the road entrance from Valley Road. We strongly object to this being changed from a footpath to a Byway.</p> <p>We have lived at the above property for nearly 20 years, when we first moved in we would occasionally have horse riders up and down the footpath, but the path has always been used by dog walkers, ramblers and is part of the Gordano round. Since the Parish Council rejected the first proposal for the footpath to be changed back in 2005, we have seen about 1 horse a year come up the footpath, we don't feel this reasonably sets a precedent with which to have the use changed. This is compared to the 10 people who use the footpath on a daily basis for walking their dogs. At present as there is no danger coming across anything other than walkers, dogs are able to run free.</p> <p>At least twice a year Gordano school use the path for a year 7 ramble which consists of a whole year cohort of children walking the path. It is also used for the Duke of Edinburgh training by the school. We don't feel this would be at all safe for the walkers if the proposal was to go ahead, when we should be encouraging our young people to be out in the countryside as much as possible, but in a safe way.</p>

We appreciate that there is vehicle access down as far as Brockley Cottage, but we own the rights for the top part of Blackberry Lane, where it meets Valley Road to our bottom garage, the farmer has right of way to his fields, our neighbours have right of way to their property and the owners of Black Rock Quarry have right of way. We feel opening it as a byway would endanger our children, animals and all walkers who pass down this lane, and would affect the maintenance of our part of the lane. The lane narrows right down to a footpath past Brockley Cottage till it meets the common (passing under very low trees which make a tunnel not much taller than a person making it extremely difficult for anyone on a horse or bicycle) The narrow path would make it unsafe for walkers and their dogs (there are no restrictions to dogs running free) if they were to meet any of the traffic that would be allowed under the Byway Open to all Traffic. The common is extremely steep and rocky, which makes navigating it either by horse, cyclist etc. dangerous. The upkeep of the common is undertaken by Weston-in-Gordano and the Wildlife Trust and the amazing wildlife which is protected would be under threat by the erosion and noise which would occur with horses and vehicles churning up the paths.

The WBA's request that this is a historical route, doesn't seem to take into account the change in the world in the 116 years, there would not have been any other types of vehicles to use the route back in 1801. On reaching the junction of Blackberry Lane and Valley Road you are on a sharp bend with no access to any other Bridleways within the vicinity. A visit to the site would show how inappropriate it is for anyone other than walkers. When we moved into our house the public footpath sign was at the top of the lane and still is, put up by the council – not a bridleway sign.

We believe that a change of use would be detrimental, too the walkers, the wildlife of the beautiful spot. We therefore reiterate our strong objection to the change in designation.

Mr & Mrs Hall

Objection

Thank you for your letter of 26<sup>th</sup> July 2017 informing us of the consultation for the proposed change in the designation of the lane by our house and path through the common. We strongly believe that it would be inappropriate for the routes to be changed from current designation (footpath with limited vehicular access rights granted to specific properties). Our objection is primarily on safety grounds as a result of the terrain and the users of the footpath, but also recognises the impact that a change could have on the natural habitat and on us personally.

**Terrain** - Where the top of Blackberry Lane joins Valley Road, there is a steep corner and cars have to pull out, or cross into the lane with care as to ensure that they can be seen by cars on Valley Road. Similarly care has to be taken, particularly coming around the corner from Valley road to ensure that the lane is clear and no harm is caused to anyone coming up it.

The top part of Blackberry Lane is owned and maintained by Down Cottage, there is a small tarmac section, followed by gravel (with some potholes). The next stretch of Blackberry Lane is also gravel (with potholes) and it is not maintained by the owners so any maintenance has to be carried out by Brockley Cottage in order for us to access our property.

After the gate to Brockley cottage, the lane narrows significantly and at the front of Brockley Cottage it is no more than a narrow footpath which goes through the common. The part of the path that goes through the common is narrow, exceedingly steep and is also rocky. Though an experienced mountain biker may navigate this safely, to do so could put pedestrians at risk. Many cyclists would put themselves in danger navigating the terrain. The parts of the path marked B to C and F to C on the map are under low trees and are unlikely to be safe for horse riders, or bikes of any sort.



**Users** -There are a large number of regular dog walkers that use Blackberry lane, some of which are elderly or bring small children. These pedestrians generally go past where the point the lane is currently navigable to a car, where it narrows to the footpath, from where they either go across the top of the Quarry or proceed down to Middle Hill common (the second part of the requested designation change).

Similarly, pedestrians from the village walk up to the common to walk their dogs, or to sit and enjoy the view on from one of the benches in the common that have been put in place by the village. In addition to the regular dog walkers, we periodically see large groups of school children, perhaps doing Duke of Edinburgh or walking with the Scouting association. Other walking groups also use the path, which is part of the Gordano Round. There is also a lovely gentleman who studied the butterflies in the common last year and is a regular visitor as are the 'twitchers' (bird watches) who come to watch the incredible birds that we have here.

There are also those (like ourselves), that return from the White Hart or activities in the village in the evening, often with torches lighting the way.

In the two and a half years we have been here, we have seen a horse rider on one occasion and on a second occasion there was evidence that a horse had ridden across the common (damage to the path surface). We are often at home and in the garden as both of us work regularly work from home.

There have also been a couple of occasions recently where a group of cyclists have dashed past (in the dark on one occasion). We have discussed what we could do to prevent this, given the safety risk they pose to other users. If the path was designated as a bridleway, cyclist are more likely to include it in a planned route, unaware of the unsuitable terrain and safety issues.

We note that in 1801 many of the local routes may have been different and there would have been very few mechanically propelled vehicles.

**Natural Habitat** - As mentioned above, there is exceptional wildlife in and around the common, a change in the designation could threaten this wildlife.

**Conclusion** - I'm sure it will be obvious from a site visit and the notes above that parts of the route are clearly not appropriate for mechanically propelled vehicles. A change of that sort would be detrimental to us in terms of both noise and maintenance of Blackberry Lane. However, we suspect that a change to that extent was never the intention rather the intention was to seek the lesser change in designation (to bridleway), which we also believe would be inappropriate. We note that we have been told that the application was made following a rejection by the parish council in August 2005. We believe that the local council determined the matter appropriately.

To reiterate, we believe that a change in designation would impact the safety of both current and any new users. We also believe that it could negatively impact the current users' enjoyment of the area (including the consequences of likely erosion) and the local wildlife.

Mr & Mrs Redway      Objection

Please note, however, that we strongly object to the enhancement of the current footpath to be used by horses or cyclists (whether mechanical or manual). In our understanding both cyclists and horses would have a detrimental effect on the paths on the Common behind Weston-in-Gordano in an area of natural beauty and some rare plants, and potentially make it unusable as a public Footpath.

Weston-in-Gordano Parish Council      Objection

Thank you for your letter of 26<sup>th</sup> July regarding the above, which I put before the Weston in Gordano Parish Council Meeting. The Councillors object to this proposal especially on health and safety grounds, as opening the proposed routes each as a Byway Open to all Traffic could be dangerous if used by "mechanically

Avon Wildlife Trust

Objection

propelled vehicles". The paths in question cross steep and stoney land. There could be problems as pedestrians and horse riders use these paths

Thank you for informing the Avon Wildlife Trust about the proposal to notify Blackberry Lane, Weston in Gordano (Footpath LA18/4, 18/5, located within Middle Hill Common Nature reserve) as a BOAT on the Definitive Map and Statement of Public Rights of Way. We object to this proposal for the following reasons outlined below: The above route is totally unsuitable for general vehicle access. Large sections of the route do not resemble any kind of trackway and it passes through Middle Hill Common. Middle Hill Common is both a Site of Nature Conservation Importance (SNCI) and a local nature reserve managed by Avon Wildlife Trust. The most important habitat on the site is that of the unimproved limestone grassland. The South-West holds 50% (approx. 25000 ha) of the UKs remaining calcareous grassland, a rapidly declining habitat. Unimproved calcareous grassland is a Priority Habitat under the UK Biodiversity Action Plan and has a Habitat Action Plan under the South-West Regional Action Plan. The reserve has not been subject to agricultural intensification and the species diversity is a result of its long history of grazing by stock and rabbits along with its shallow soils. The flora of the rocky areas and slopes is typical of unimproved calcareous grassland.

Over 180 plant species have been recorded on the site, including several County Notable Species including include pale flax (*Linum bienne*), dropwort (*Filipendula vulgaris*), fenugreek (*Trifolium ornithopodioides*) and yellow-wort (*Blackstonia perfoliata*). Other species to have been recorded include wood spurge (*Euphorbia amygdaloides*), parsley-piert (*Aphanes arvensis*) and rue-leaved saxifrage (*Saxifraga tridactylites*). The short turf area is made up of important and attractive calcareous grassland flora which include rockrose (*Helianthemum nummularium*), kidney vetch (*Anthyllis vulneraria*) and horseshoe vetch (*Hippocrepis comosa*). These plants attract a number of butterfly species including brown argus (*Arica agestis*). The medium and longer sward contains plants typical of a wide range of unimproved grassland including ox-eye daisy (*Leucanthemum vulgare*), knapweed (*Centaurea nigra*) and field scabious (*Knautia arvensis*). These support the marbled white butterfly (*Melanargia galathea*). To our knowledge there has been no vehicular access to the Common during our management and long-term involvement with the Common. This is in part owing to the steep sided slopes and thin soil with rocky outcrops on the surface (see photograph). There has been a permissive Bridleway for over 25 years that follows the eastern boundary down from Blackberry Lane then turns SW at the southern boundary to join the track from Western Lodge down to Hill Lane in Weston in Gordano. This does not have much usage due to the terrain and large sections of the proposed BOAT route would be dangerous for horse and vehicular access.

Access to the route is also restricted by a flight of steps. The land is clearly signed as a nature reserve and yet we have not been approached by any members of the public wishing to gain access along the footpaths for vehicular or horse use. Blackberry Lane is largely a rough surfaced track until it reaches the Reserve entrance. Vehicle and horse access across the routes currently designated as footpaths, within the reserve, would be very detrimental to this important grassland habitat that complements the other woodland and wetland sites in the Gordano Valley, providing a range of representative habitats in a discrete area.

Mr S Rogers	Objection	<p>I have received a copy of your letter to Ms C Dixon, Clerk to Weston in Gordano Parish Council regarding the modification of the Blackberry Lane Footpath into a Byway open to all Traffic. As a resident of the village for 35 years I have enjoyed walking the dogs along the Blackberry Lane footpaths, and know them very well.</p> <p>I do hope that those of you forming the Rights of Way Sub Committee take the time to come and survey the footpaths shown on the Pre Order Consultation Plan EB/Mod 34, if you do I'm sure that you will come to the same conclusion as me in thinking that these footpaths are not suitable for the use of vehicles.</p> <p>A site visit will show that the footpath between points C and B on your map is very steep, narrow with banks on both sides I have at times met horses using the path and have been forced to climb up the bank to allow the horse and rider to pass; had I been pushing a pushchair at the time this would not have been possible. I don't believe that the path is wide enough for a vehicle to pass over it, but a motorcycle could which if travelling faster than a horse and rider would cause an increased danger.</p> <p>The path between C and B on your map is again very steep and is essentially a single track although the hillside drops away quite openly on the valley side from the path; at point F are very high rocks which if a 4 x 4 tried to negotiate would cause anyone else using the path to take avoiding action.</p> <p>I have witnessed the result of a fool hardy driver trying to drive down the path between points E and F in the mid 1980's, the result being an overturned car which rolled down the hill and stopped in the trees above path C and B. it took quite some time to recover the vehicle.</p> <p>In my opinion modifying these paths into a Byway is unnecessary and would put the safety of the pedestrians and horse riders who already use the path at risk; I also believe that the drivers of any vehicle could also be at risk of injuring themselves and other innocent parties.</p> <p>My final point would be to say that there are perfectly good roads, Valley Road which already has a bridleway alongside part of it and Clevedon Road will take vehicles quite safely between points A and D on your map.</p>
Mr A Leonard	Objection	<p>I have been forwarded you letter to the Parish Council dated 26 July. We lived in Weston in Gordano from 1973 to 2014, moving from 3 The close to The Old Thatch in 1980. I was a Parish councillor when this matter was raised in 2005 and also secretary to the team that administered the management of the common.</p> <p>Until about 6 years ago horse riders used Hill Lane for access to ride across the Common. At the top of Hill Lane the access to the common was merely a path which we kept clear for pedestrians and horseriders. The new owners of Weston Lodge cleared this path and made a gravel track to use as their access to their property. This track is very steep and the gravel is loose. Horse riders no longer use this track as it is dangerous for them to go up or down.</p> <p>The walkers and horse riders originally use the path at the top of the track near the new gate pillars which have been built. This access is steep and rocky and was not easy or safe for walkers or riders, particularly if it was at the corner of this track. This followed the top field of the property originally called Greenacres. A horseshoe sign was erected. The intention was to separate horses and pedestrians for safety reasons. My main concern is the proposal to include access across the common for mechanically propelled vehicles. This would be dangerous for pedestrians and walkers, and would damage this special environment.</p>
Mr C Saunders	Objection	<p>Your plan MOD 34, Blackberry Lane, Public Rights of Way across Middle Common refers;- Your show x2 routes. This is incorrect. Only the right hand route, C.B, which skirts the common is correct.</p>

Weston in Gordano Ordnance Survey Sheet 1113, 1882, revised 1931, clearly shows only 1 footpath, C.B. incidentally this has always been known locally as 'Rocky Path'.

The left hand route you indicate, CFE only came into use approx. 18 years ago, when the original footpath became irretrievably damaged by horse riders, to the extent horses could only use it. As a gesture of goodwill an alternative route was offered by the Village, across the middle of the common, route C.F.E. Steps were built at F to facilitate this.

Predictably, in due course, approx. 6 years ago, this was also destroyed. Since then, the footpaths have only been used by walkers. Traditionally, the common was used for grazing cattle by villagers, as they exercised their rights over the common. It was however, the regular and repetitive use of the footpath(s) by horseriders that lead to the exposure of the underlying rocks, leading to deep ruts and erosion of soil. The original footpath is slowly recovering from the horses, although there are still sections of deep ruts between exposed rocks making it hazardous to walkers. The substitute route, where it joins the open Common, is particularly dangerous.

Incidentally, the recent development in the Peak District National Park, concerning Bridleways Open to all Traffic, have resulted in a Traffic Restriction Order being issued, after 4 years of dispute, to safeguard the footpaths for walkers.

In addition, barriers have been erected recently coming down from neighbouring Walton Common, to prevent access to horse riders, because of the damage to footpaths. The recent history of Middle Common and the evidence of our own eyes clearly show the proposed change of use of the footpath(s) to a byway open to all traffic to be impractical and dangerous, based on horse usage alone.

The inclusion of mechanically propelled vehicles would bring the additional problems of noise and fuel pollution to what is a sanctuary for relaxation and wildlife.

The request by Woodspring Bridleway Assn to adapt the Right of Way as a Byway Open to all traffic, should therefore be rejected unconditionally.

We have been residence of Briardene, Hill Lane since 1984. The two requested routes should categorically not be granted a legal order recording them as a Byway Open to All Traffic.

Middle Hill Common is owned by the village and is 'an excellent example of Limestone grassland, which is becoming increasingly rare in Britain. Over 100 different wild plant live on the common including Rock Rose, Birds Foot-Trefoil, and Horseshoe Vetch'. It is a wonderful habitat for Butterflies, woodland and common animals, birds and invaluable wildlife. The presence of mechanically propelled vehicles (MPV's) would potentially extinguish growth and pollination of many plants and deter future settlement.

Mechanically Propelled vehicles have not utilised either of the proposed routes between points A-B-C and A-E-F – MOD 34 Blackberry Lane Plan' during our 33 years residence at Hill Lane and there is no merit or justification for this situation to change. It is fair to say horse riders accessed Middle common from Hill Lane until approximately 2010. However, this situation changed following (unauthorised?) widening and application of a gravel stone access to the path from the north point of Hill Lane, through point C & F to serve Weston Lodge. Photographs 2, 15 and 16 of the attached sheet illustrates the hazardous surface. It is very difficult for walkers and virtually impossible for horses to maintain a foothold on this steep slippery section of vandalised terrain.

Photograph 17 shows gravel accumulation at the southern point of Hill Lane washed down with rain water during storms running into the storm drainage system.

Mr & Mrs M Bull –  
Also signed and  
approved by Mr &  
Mrs A Selwyn

Objection

For reference, we draw your attention to Photograph 3-6 and 10-14 illustrating the landscape and pathways through the common between points F, E, A and historical tracks B to C. Photograph 7 pictures the path as it passes adjacent Brockley Cottage. In summary, we can only conclude the granting of an Order to change the Mapping to a 'Byway Open to All Traffic' would be catastrophic and in contravention of the spirit and principles set out in 'The Natural Environment and Communities Act 2006 – Part 6' i.e. allowing MPV's would:-

1. Have a destructive impact on the preservation of wildlife and plants present on Middle Hill Common
2. Generate additional parking and traffic problems on Hill Lane. Additional photographs attached illustrate mandatory parking breaches i.e. within 10 metres of The Close/ Hill Lane and Hill Lane/ B3124 'T' Junctions. Urgent measures are necessary to mitigate these perils. The BOAT request would only serve to compound the problem.
3. Amplify the perilous ingress and egress to and from Hill Lane and the B3124, the main route between Portishead and Clevedon (Photograph 18).
4. Noise and pollution of e.g. Quadbikes and 'motor cross' style MVP's would disturb residence and wildlife.
5. The terrain and paths would be extremely hazardous and entirely incompatible to combine countryside walkers and MPV users.

We trust the foregoing and attachments prove self-explanatory and respectfully request your assurance that the subject applications by Woodspring Bridleways Association to record the routes applied for on Map MOD 34 – Blackberry Lane to record a 'Byway Open to All Traffic' are refused.

Mr & Mrs G Mitchell      Objection

I see no reason to approve this application for the following reasons. The terrain is not suitable for horses, ridden or led. The terrain is not suitable as a footpath leading to possible accidents. The alternative path shown on the map is entirely suitable for all requirements of any traffic that use the area and any variation is unnecessary. The terrain is not suitable for any motor or motorbike traffic and such approval will cause the destruction of a very natural and beautiful area. I believe that there would need to be a very strong case to increase the pathways in that area as the existing ones are entirely sufficient and satisfactory.

Mr J Bridges              Objection

I would like to record my objection to this proposal. The two pathways in question are narrow, for the most part, and the surface is broken up by rocky outcrops. Conventional 4x4 vehicles would not easily transverse these paths although two wheeled and quadbike users would find the pathways an acceptable challenge and this is the main reason for my objection. To my knowledge no horseriders have used the two pathways in recent, and I believe the request to change was made by a group of riders wishing to avoid travelling along Valley Road. However, when they did use the footpaths, the surface was churned up by the horses and made nearly impassable for pedestrians. The paths pass through the Weston-in-Gordano Middle Common which is currently maintained by the Avon Wildlife Trust. I am sure they would not wish the area to be churned up and destroyed by wheeled traffic. Access to the pathways is very restricted with no acceptable parking facilities at either end. Overall, altering the two tracks from pedestrian usage to one allowing usage by wheeled traffic would be detrimental to householders at either end in particular, and to neighbouring dwellings in general, and should not be allowed to happen. I seriously hope North Somerset Council will not allow this change in usage to happen.

Green Lane Protection Group	Objection	Thank you for your letter of July 2017 on this application. This is to record that GLPG objects to Mod 34. The reason is that the application is defective in failing to satisfy WCA 1981 Sch 14 and W&C Regs 1993 Sch 7 as found in <u>Winchester College + Humphrey Feeds v Hampshire CC[2008] EWCA Civ 431</u> . That case was found by the Supreme Court in <u>R {TRF} v Dorset CC [2015] UKSC 18</u> to have been correctly decided. Under <u>Maroudas v SoSEFRA+OxCC 18 march 10 CA</u> applications cannot later be made good.
FCC Environment	Objection	Can confirm that FCC as the landholder (across which part of the proposed Byway crosses) <u>wish to object to the order</u> . FCC do not consider that there is conclusive evidence that justifies the proposed change to the definitive map. Please note, FCC has not been provided with any evidence put forward as part of the order. As requested, is it possible to email a copy of the existing definitive map, statement for the area in question and evidence submitted proposing the creation of a Byway?
Mrs V Craggs	Information	In with all my User forms is a small document by the Gordano Society and stamped with a Woodspring stamp called Trails in Gordano Number 7 There is a map. There are details of a FP..... Climb over the stile. You are now standing in the ancient bridle path or green way running between Portishead and Weston in Gordano. The Cottages were farm workers dwellings. Continue along the bridle path towards Middle Hill”

## 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 route A-B-C-D no evidence has been submitted indicating that use of this route has ever been challenged, several responses refer to the route being used as a ‘permissive bridleway’ or have known the route to be used by horse riders. A couple of references have been made above relating to the attempted use of this route in later years by mechanically propelled vehicles. There is no clarity as to whether such uses have ever been challenged.

In regard to the route C-F-E no evidence has been submitted indicating the use of this route to have been challenged.

It is unclear as to what prompted the applicant to submit the application in 2005; there is however a telephone note on file dated 9 September 1998 which records that concerns have been expressed that attempts are being made to stop horse use. This information would account for the User Evidence Forms being dated 1998. No evidence has been given as to what action called the use of these routes into question.

Normally in the absence of an action which called the route into question it would be taken that the submission of an application was the date of challenge, in this case 2005. However the file note dated 1998 provides an indication and none of the user evidence are dated after 1998.

Therefore accepting the date of challenge for the route A-B-C-D was 1998 taking into consideration the information detailed in **Document 11 to Document 13** this seems to indicate that use was being made of this route by persons on horseback. In addition to this the Statutory Declarations also provide minimal evidence of the use of pony and traps. Bearing all of this in mind the period to look at is 1978 – 1998.

**Document 11** shows that during that period between 23 and 25 of these users used this route, whether that was walking or riding. Such use does not support the claim that this route should be recorded as a Byway Open to all Traffic. In addition to this the evidence contained within the Statutory Declarations provides minimal evidence to support a Byway Open to all Traffic and is considered insufficient.

In regard to the route C-F-E, **Document 13** shows the number of users who have claimed to use this route. Again looking at the period 1978 – 1998 between 5 and 7 users claim to have ridden this route. This is not strong evidence of this route being established as a Public Right of Way and does not support the claim that this route should be recorded as a Byway Open to all Traffic.

In addition to this evidence has been given that this route has been used by permission of the Middle Hill Management Committee, therefore such use is not “as of right”.

Therefore taking 1998 as the date of challenge it would appear that the test under section 31 of the Highways Act has been met and that 20 years usage has been enjoyed by these users, however such evidence does not support the claim that the routes A-B-C-D and C-F-E should be recorded on the Definitive Map as Byways open to all Traffic

### Summary of Evidence and Conclusion

#### Summary of Documentary Evidence

Taking all of the documents detailed within this report into consideration the majority of these documents illustrate Middle Hill Common as being accessible from both Hill Lane and Blackberry Lane (formerly called Down Lane) since 1801, however the fact that these are depicted does not confirm status.

As detailed in Appendix 4 the depiction of these routes with titles such as “Down Lane” seems to suggest that this section of the route was considered to be a route of a higher status than others illustrated on the map. This is shown from Point A of the claim which is currently referred to as Blackberry Lane.

The only evidence found which illustrates that the Council have any maintenance responsibility for this area is that referred to in the 1930 Handover Map, Hill Lane which runs from Point D to Point C of the claimed route which is coloured yellow. This map is also the first piece of evidence that identifies the track for one of the claimed routes, of which A-C is shown as a footpath (FP). However there is no clarification of route C-F-E’s existence or status.

Whilst these may well have been routes used back to the 1800s for accessing an area known as Middle Hill Common 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.

During the production of the Definitive Map in 1950 only the route A-B-C-D 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 persons on foot who came from the locality.

Taking all of the documentary evidence into consideration little evidence has been found to support the claim that A-B-C-D or C-F-E have established rights associated with a Byway Open to all Traffic.

Therefore, based on this documentary evidence, this Officer does not feel that the evidence supports the claim that these routes should be Byways Open to all Traffic.

#### Summary of User Evidence

The evidence detailed within Appendix 5 clearly illustrates that these routes have been used by the public. From **Document 10 – Document 13** it would appear that these routes have been used “as of right, without hindrance and not secretly” by the parties who have completed the User Evidence Forms. More use has been made of the route A-B-C-D, with far less using the section C-F-E. This can possibly be explained by the fact that users have advised that this route was offered up by Middle Hill Management Committee when the surface condition of the footpath became damaged. The use which has been enjoyed over these routes has been on foot, cycle and horseback. Use varying between 20 times and 600 times a year. Apart from the two Statutory Declarations no one has claimed use in a pony and trap or any form of mechanically propelled vehicle. This user evidence does



provide substantial evidence of A-B-C-D being used by horse riders with minimal evidence of the use of the section C-F-E during the relevant period 1978 - 1998.

Therefore taking into consideration all of the information that has been collated from the 32 User Evidence Forms and the Statutory Declarations this officer does not feel that the evidence supports the claim that A-B-C-D and C-F-E should be recorded as Byways open to all Traffic, however there is strong evidence that the route A-B-C-D should be recorded as a Bridleway.

## **Summary of Consultation Responses**

As detailed within **Appendix 6** out of the consultation which received 22 responses. 17 responses are objections, one offering information, no responses of support and four confirming no objection. Those objecting have provided information relating to their personal knowledge of the area of land. Photographs supplied will be shown at this meeting. No further evidence was submitted which could have been included within this report.

The main concern for most objections is damage and disturbance to Middle Hill Common, from the end of Blackberry Lane to Hill Lane. This piece of land is also known as Middle Common Nature Reserve, which holds a number of protected and rare species of plants and wildlife. In addition to this most objectors are concerned about the damage horse riders, cyclists and mechanically propelled vehicles will cause to the existing footpaths and pathways through the common and the potential danger to the walking public.

Responses from Avon Wildlife Trust and Mr J Harrison, refer to the route C-F-E as a 'permissive bridleway', with additional responses referring to have witnessed horse riders using the full length of the route from Point D to A or have known horses to use the route dating as far back to 25 years ago. However, many mention the destruction that was caused by the horse riders during this time and now object to further use. There is no evidence of any landowners challenging horse riders of their use throughout this period.

Therefore based on the evidence supplied by the landowners, there is nothing which would lead this officer to support the claim that these routes should be recorded as Byways Open to All Traffic.

## **Conclusion**

This application affects routes which are already recorded on the Definitive Map as Footpaths as well as an unrecorded route. 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.

Based upon the evidence which has been included within this report whilst sufficient evidence has been submitted showing that both of these routes A-B-C-D and C-F-E have been used by horse riders, insufficient evidence has been submitted to show that these route should be recorded as Byways Open to all Traffic.

In regard to the route C-F-E evidence has been supplied both by the Users and the parties who have responded to informal consultation that this route was granted by Middle Hill

Management Committee and the owners of the land as a permissive route for users to use should they so wish, no action was taken to stop users using the route A-B-C-D. Therefore the section C-F-E has been used by permission, not “as of right”.

The land over which the route A-B-C-D passes is first recorded on the Enclosure Award 1801. The initial part of this from Point A is as a Road/Drove known as Down Lane. However, this section of the route is not mentioned within the award, therefore leading to the impression that this pre-existed the Enclosure process. The rest of the route B-C-D is not set out in the award. This route A-B-C-D is illustrated on most of the historical evidence since then depicted on a similar line to that shown today. Furthermore, the user evidence only states the use on foot and or horseback, giving no indication for a Byway Open to All Traffic.

Therefore having regard for the legal tests that should be applied.

In respect of the route A-B-C-D the test is whether “a public footpath shown on the Definitive Map “ought” to be shown as a route of another description. Although this officer does not feel that sufficient evidence has been submitted to show that this route should be a Byway Open to all Traffic, it is felt that sufficient evidence has been submitted to support the making of an Order to change this route to a Bridleway.

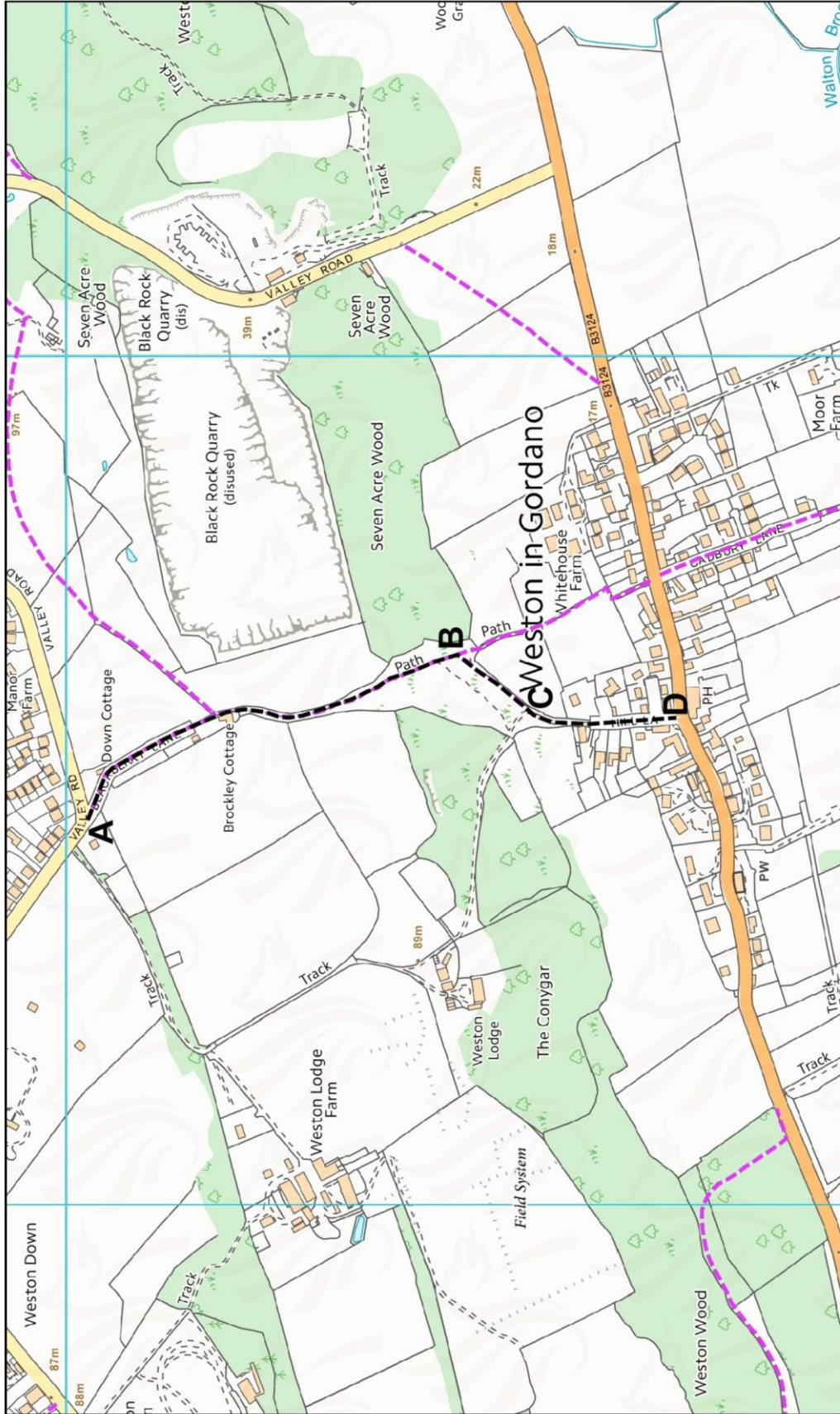
In respect of the route C-F-E the test is whether “does a route subsist or is reasonably alleged to subsist”. Whilst the User Evidence may have been sufficient to meet this test, the fact that acknowledgement has been given to this route being by permission reduces the strength of this claim. Therefore for that reason I do not believe that a case has been made for the section C-F-E.

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 for a Byway Open to all Traffic.
2. Whether the application to make a Definitive Map Modification Order for Byway Open to all Traffic for the route A-B-C-D should be denied.
3. Whether the evidence supports the making of a Definitive Map Modification Order for the route C-F-E for a Byway Open to all Traffic.
4. Whether the application to make a Definitive Map Modification Order for Byway Open to all Traffic for the route C-F-E should be denied.
5. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D for a Bridleway.
6. Whether the evidence supports the making of a Definitive Map Modification Order for the route C-F-E for a Bridleway.
7. If the Committee accepts the recommendation of the Officer that a Bridleway Order should be made for A-B-C-D they are asked to authorise the confirmation of the Orders if no representations or objections are received.
8. That it is understood that if objections are made, the Order will be forwarded to the Secretary of State for determination. If this happens, subject to the Officer being content that there was no significant change to the balance of evidence; the Council will support the Order at any subsequent Public Inquiry.

# DOCUMENT 1

## ROUTE A-B-C-D



**MOD 34 - Blackberry Lane**  
 Route A-B-C-D (ST:4474)

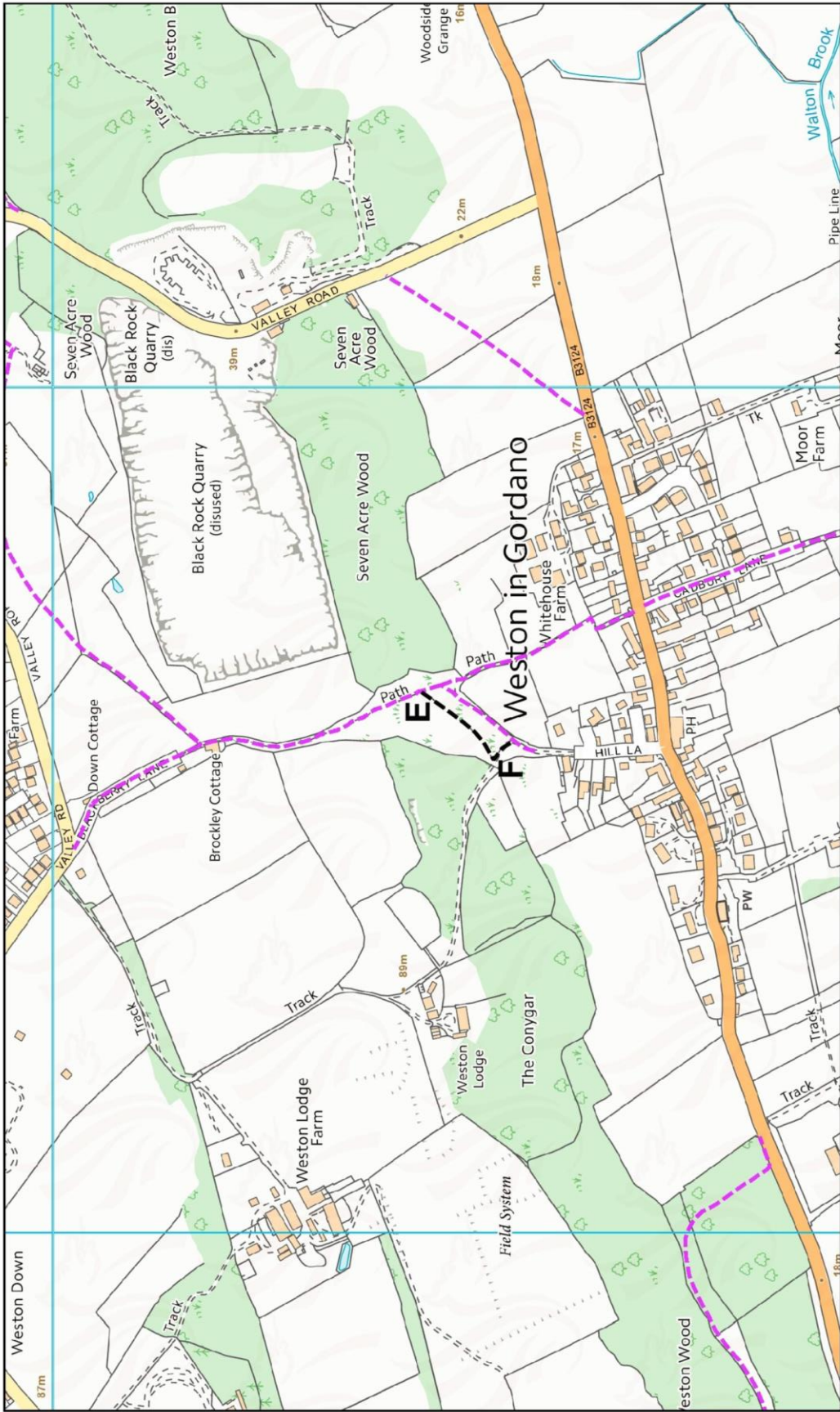
**Public Rights of Way**  
 Castlewold, Tickenham  
 Road, Clevedon, BS21  
 6FW

Scale: 1:6000  
 Drawn by: Lucy Roca  
 Date: 09 August 2017  
 Time: 11:04:54



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Scale: 1:6000  
 Drawn by: Lucy Roca  
 Date: 09 August 2017  
 Time: 11:07:32

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

**MOD 34 - Blackberry Lane**  
 Route E-F (ST:4474)



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## Bramble Lane and Somerset's List of Streets

### Summary

Highways and routes over which all persons have a right of passage. To stop up the public right of passage a specific legal process involving a 2<sup>nd</sup> and 3<sup>rd</sup> party has to be followed.

Private or common ways are routes over which only a limited or fluctuating group have an access right. They can be stopped up in some circumstances, without necessary reference to a 2<sup>nd</sup> or 3<sup>rd</sup> party.

A street is "any highway and any road, lane, footpath, square, court, alley or passage, whether a thoroughfare or not, and includes any part of a street".

Streets which the Local Authority (LA) has a duty of care over are shown on a document known as the "List of Streets"

In Somerset the list of streets is currently based upon a collection of coloured maps.

The List of Streets has since circa 1950 shown 4 identifiable standards of streets which LA claims that it is responsible for:

Main Roads	Coloured Red.
B Roads	Coloured Green.
Unclassified Class 3	Coloured Ochre.
Unclassified Class 4	Coloured Brown.

The class four roads are village loop roads, housing estates and roads serving local traffic.

Between 1930 and 1950 the colour coding was slightly different and there was also an additional lower class.

Main Roads	Coloured Red.
B Roads	Coloured Blue.
Unclassified Class 3. X Roads	Coloured Green.
Unclassified Class 4. Y Roads	Coloured Brown.
Unclassified Class 5. Z Roads	Coloured Yellow.

This 5<sup>th</sup> class referred to private roads or common ways which were originally accommodation roads i.e. a road that led to property that did not abut a public highway. As such, Class 5 roads were not the direct responsibility of the LA as they were owned by the land owners that abutted them and did not possess a right of passage for all persons.

However by way of laws such as the Highways Act 1835, the Local Government Act 1888, The Public Health Act 1875 and the Private Street Works Act 1894 (and their following amendments), there has been a duty of care placed upon the LA to monitor and secure the maintenance of class 5 ways. Maintenance requirements could be ordered upon the land owners and if not completed with carried out by the LA at the expense of the owners of the ways. The routes could be adopted by the LA in certain circumstances (with the agreement of the landowner.)

There was and still is a discretionary power for the LA to pay out of the public purse for the works required to bring the private ways up to a standard where they could be adopted, if it could be justified as being to the good of the locality.

Records show that Parish and Urban District Councils undertook the repair and sometimes the adoption, of a number of class 5 roads between 1890 and 1940. Roads formally adopted were done so by a well-documented statutory process and over coloured brown on the list of streets.

Between 1930 and 1950, routes which ceased to be common ways because of changes in land ownership or land use were deleted from the "list" by simply crossing them out as no statutory process needed to be followed.

In the time around 1950 all yellow class 5 roads that still remained were mysteriously re-coloured brown on the list. No adoption process seems to have been followed apart from the use of a marker pen on the maps. The LA has been unable to give any explanation of the adoption of well in excess of 400 class 5 road that took place.

Bramble Lane is a cul de sac route that was until 1934 a common way that led to fields. It was not considered to be a highway by the then LA but was used by a number of local people to access their fields by way of an easement. The common right ceased to exist when the land came absorbed into single ownership and use. It was coloured yellow as a class 5 road on the 1930s list of streets.

The LA considered an adoption of a number of routes around Haslebury Plucknett, including Bramble Lane, in the 1920s and early 30s. Some class 5 yellow routes which were of local use were brought up to standard and formally adopted by the proper and well documented procedure. Bramble Lane's surface, unlike the documented adopted routes, is as it has always been, and unlike the other routes that were adopted, no record of an adoption procedure being followed can be found. However in the mass re-colouring circa 1950 Bramble Lane was re-coloured brown.

Somerset has not correctly investigated the status of Bramble Lane or other ways before claiming ownership of them. Instead of looking at the full history of routes they have referred to their suspect "List of Streets" and stopped there ... until challenged.

When the LA was asked what proof they could provide to show that they has adopted Bramble Lane they carried out an investigation that can best be described as partial. They produced selected paragraph extracts and ignored counter evidence that appeared above and below on the same pages of LA minutes. They have failed to produce any adoption evidence and failed to explain their actions.

It is not for me or the landowners, in the case of Bramble Lane, to prove by negative evidence that the route is not a publicly maintainable highway. It is for the LA to produce some cogent evidence that it is.

I recommend that Somerset County Council are again asked to prove the adoption of Bramble Lane and explain the reasoning or lawful method of the absorption of the class 5 roads into the higher class 4s. If they are unable to provide a satisfactory response they should replace the gate, fence and make good the damage they have caused.

I am unable to decide which of the following reasons have caused the Counties stance and actions:

- The innocent loss of documentary evidence
- The mis-interpretation of the known facts
- Incompetence
- The wish to hide improper actions

I believe Somerset County Councils reluctance to back down on this matter may be because unless they can prove the adoption of Brambles Lane and all other class 5 roads:

1. They appear to have taken without lawful authority a gate and fence belonging to the owners of Bramble Lane.
2. They appear to have claimed (unwittingly?) routes by an improper "adoption" and therefore continuing central government SSA finance for hundreds of unsuitable roads.
3. They have been (unwittingly?) telling purchasers of land, since 1950, that the purchase property is served by a publicly maintained road when no formal adoption procedure has been used.





SUSAN CARTER  
HEAD, COUNTRYSIDE DIVISION

DEPARTMENT OF THE ENVIRONMENT  
TRANSPORT AND THE REGIONS

ROOM 917  
TOLLGATE HOUSE  
HOULTON STREET  
BRISTOL BS2 9DJ

24 AUGUST 1998

Dear Chief Executive,

### UNCLASSIFIED COUNTY ROADS

1. This letter is to advise you of the conclusions reached by Department of the Environment, Transport and the Regions on the interpretation of the term "unclassified county road" (UCR). This advice replaces previous advice, usually given in response to specific enquiries rather than a general statement, which was withdrawn in March 1998.

2. We have reached the following conclusions (with the usual proviso that the Secretary of State cannot give an authoritative interpretation of the law as only the Courts can do that):

*B.R. 323-*  
i) The Highways Act 1980 places a duty on highway authorities to maintain highways, which includes footpaths, bridleways and carriageways. Highway authorities have a further duty under section 36(6) of the Highways Act 1980 (and earlier Highways Acts) to prepare a list of highways maintained at public expense.

*3.6.19 118  
119  
120*  
ii) The Local Government Act 1929 made provision for "unclassified roads", "classified county roads" and "county roads". The term "unclassified road" was made redundant by the Local Government Act 1972. Some routes may, however, be described as unclassified county roads (UCRs) on certain documents, including the list of highways maintained at public expense.

iii) In relation to an application under the Wildlife and Countryside Act 1981 to add a route to a definitive map of rights of way, the inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide

*PTO*



evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights.

iv) It would, therefore, be possible for a way described as a UCR on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way, provided the route fulfils the criteria set out in Part III of the Wildlife and Countryside Act.

3. Against this background, we have concluded that we cannot offer any guidance which is applicable in all cases on the rights that exist over routes known as UCRs. Any questions about the status of such routes, and the rights that exist over them, will need to be resolved by highway authorities on a case-by-case basis.

*Yours sincerely,  
Susan Carter*

SUSAN CARTER

DOCUMENT 5  
1801 WESTON-IN-GORDANO ENCLOSURE AWARD



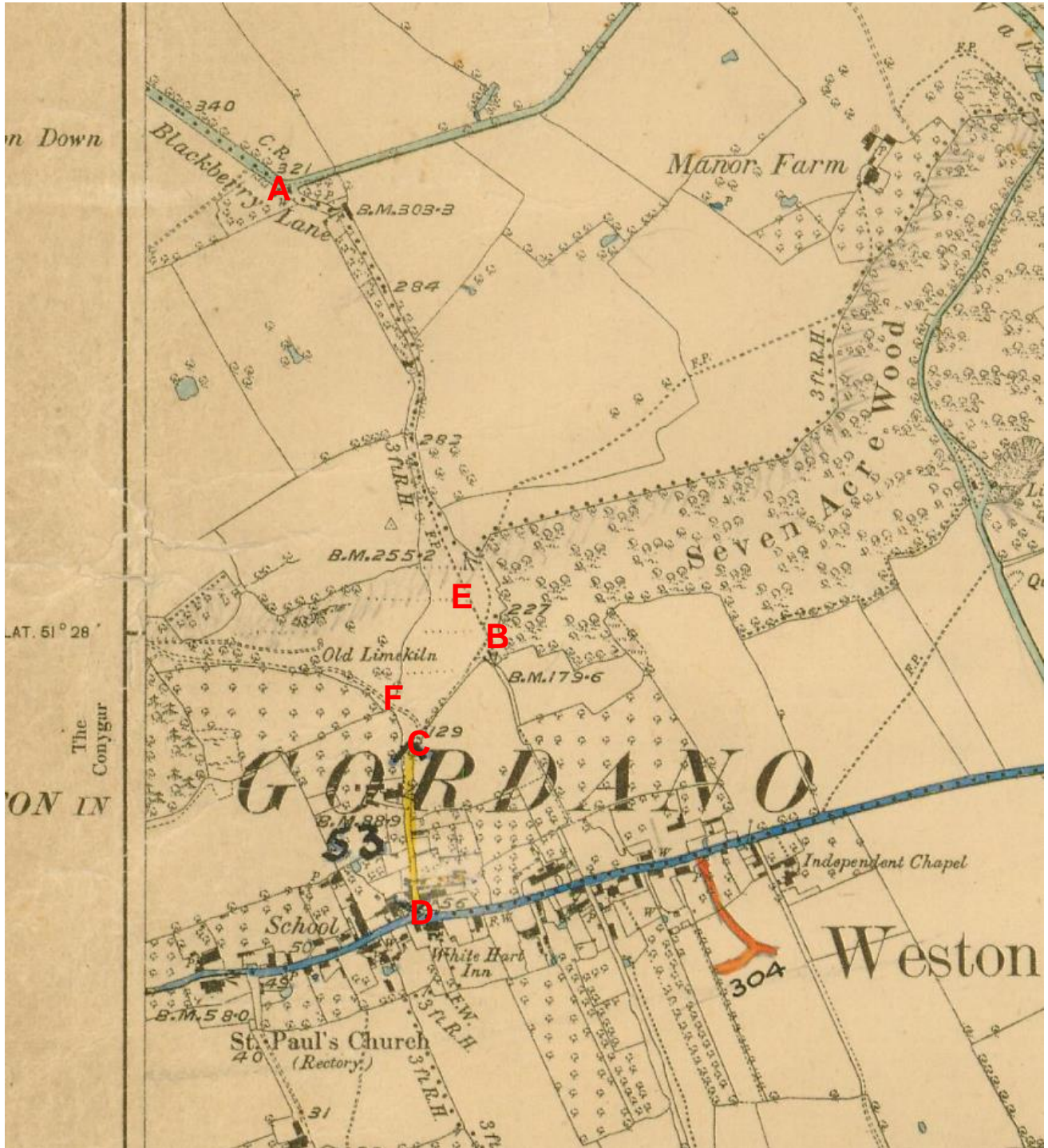
DOCUMENT 6  
WESTON-IN-GORDANO TITHE MAP 1840







DOCUMENT 8  
1930 HANDOVER MAP





DOCUMENT 9  
1956 DEFINITIVE MAP

