

North Somerset Council

REPORT TO THE	PUBLIC RIGHTS OF WAY SUB COMMITTEE
DATE OF MEETING:	15 NOVEMBER 2017
SUBJECT OF REPORT:	CLAIMED BRIDLEWAY HAVYATT COMMON.
TOWN OR PARISH:	WRINGTON
OFFICER/MEMBER PRESENTING:	ELAINE BOWMAN
KEY DECISION:	NO

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee deny the making of a Definitive Map Modification Order because there is insufficient evidence to support the making of a Bridleway Order.

1. SUMMARY OF REPORT

This report considers an application which was made on the 9 July 2004. That application requested that two routes, crossing Havyatt Common in the Parish of Wrington, should be recorded as Bridleways. The claimed routes are currently shown on the Definitive Map as Footpath AX30/10 (A – B) and Footpath AX 30/60 (C-D) with a further section of route unrecorded between D and E. 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 Orders be made and confirmed, would be to amend the Definitive Map and Statement for the area.

The applicant has provided minimal evidence in support of this application making reference to an Enclosure Award dated 1913 referencing what is believed to be a document entitled “public Roads and Bridleway shown in brown”. It is suggested that a copy of this is in a previously determined file relating to Cophorn Lane.

This report is based on historical documentary evidence held by North Somerset Council only, no user evidence having been supplied.. A Location Map EB/MOD50 showing the routes A-B, C-D and D-E being 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 Map EB/MOD 50

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 the Additional Documentary Evidence

Appendix 5 – Consultation and Landowners Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – Applicants Application

Document 2 – Route A-B

Document 3 – Route C-D-E

Document 4 & 5 – Wrington Tithe Map 1840

Document 6 – Wrington a Enclosure Award 1913

Document 7 & 8 – Handover Map 1930

Document 9 – Definitive Map 1956

2. POLICY

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

3. DETAILS

Background

i) The Legal Situation

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

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

ii) The Role of the Committee

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

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the Department of the Environment, Food and Rural Affairs (DEFRA) for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Government Office for the North East.

Conclusion

As this report relates to routes, A-B, C-D and D-E, two of which are currently recorded on the Definitive Map as Footpaths AX 30/10 (A-B) and AX 30/60 (C-D) 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 at this stage affected landowners have been contacted. In addition to this Wrington 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.

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.

AUTHOR

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BACKGROUND PAPERS: - Public Rights of Way File Mod 50

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 Bridleways 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.

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 9 July 2004 from Woodspring Bridleways Association (“The Association”). The basis of this application was that the routes A-B, C-D and D-E shown on the Location Plan (EB/Mod 50) should be recorded as Bridleways.

The evidence which the applicant wished to rely upon is stated on their application form. A copy of the application is attached as **Document 1**.

1913 Enclosure Award – Copy attached

This matter is currently recorded on the Definitive Map Register as Mod 50.

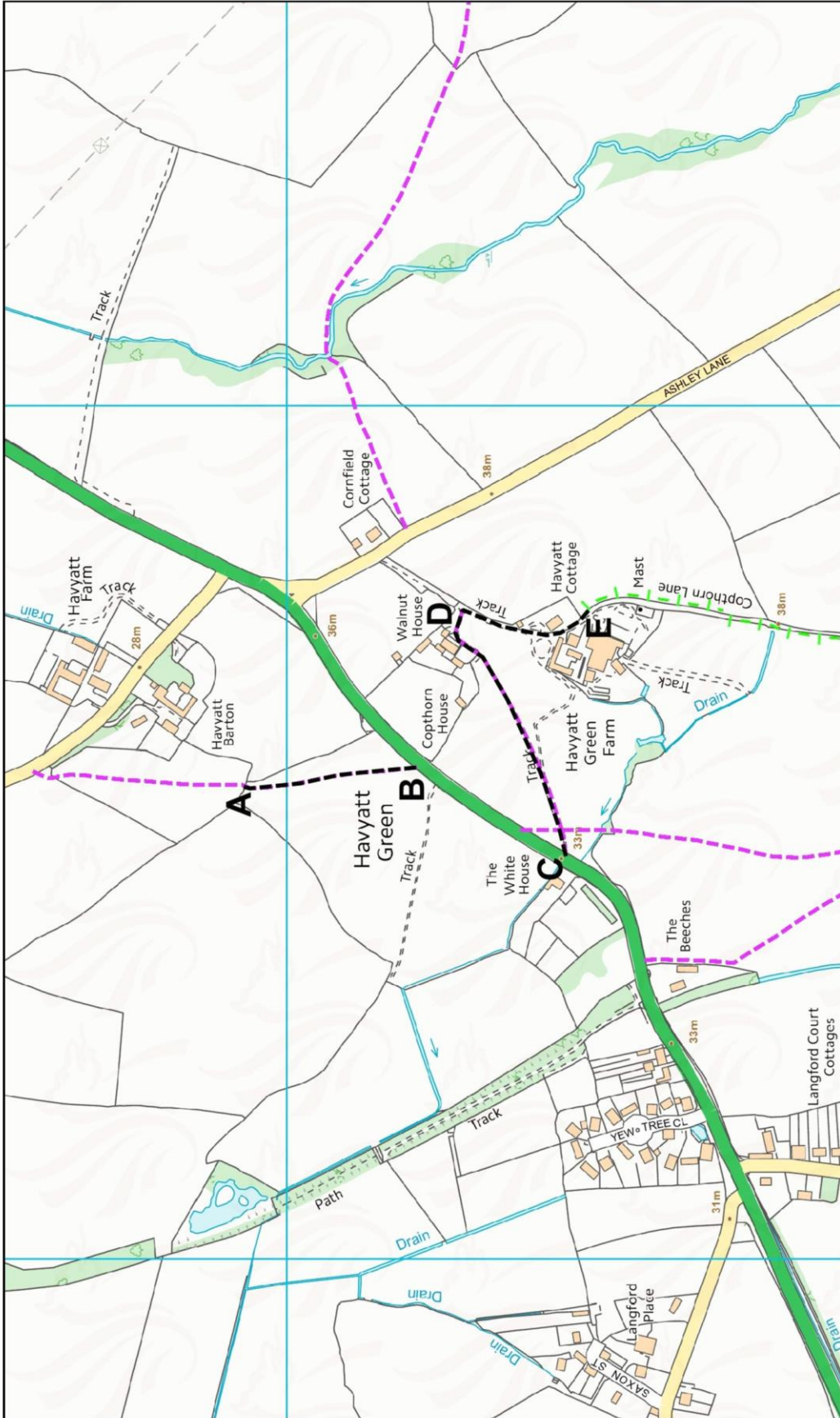
It should be noted that the Council has undertaken additional research into records that are held within the Council office. These are detailed in Appendix 4 of this report.

2. The 2004 application claims that Bridleways should be recorded over a number of routes that are currently recorded on the Definitive Map as well as adding a new route. The paths that are currently recorded on the Definitive Map and Statement which are affected by this report are Public Footpath, AX 30/10 (A-B) and Footpath AX 30/60 (C-D). The claimed routes affect routes in the Parish of Wrington.
3. The first route being claimed commences at its junction with the A38 point A and proceeds across the common on the line of Footpath AX 30/10 in a north-westerly direction for a distance of approximately 206.83 metres to Point B. At this point there is a five bar gate.
4. The second route being claimed commences at its junction with the A38 point C and proceeds across the common on the line of Footpath AX 30/60 in a south-easterly direction towards Walnut House for approximately 327.37 metres to Point D.

At point D the claimed route then joins onto an un-adopted track that travels in a southerly direction for approximately 163.90 metres to Point E, which is the start of existing Bridleway AX30/67. The route between point D and E is not an existing Public Right of Way.

5. These claimed Bridleways are illustrated as bold black line on the attached Location Map (scale 1:6000) and for clarity A-B is illustrated on **Document 2** (scale 1:5000), C-D-E is illustrated on **Document 3** (scale 1:5000).

LOCATION MAP EB/MOD 50





Public Rights of Way
 Scale: 1:6000
 Drawn by: Lucy Roca
 Date: 26 July 2017
 Time: 11:55:24

MOD 50 - Hayatt Common, Burrington
 Grid Ref: ST4760


North Somerset COUNCIL

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Castlewood, Trickenham
 Road, Clevedon, BS21
 6FW

Applicants Evidence

This application has been submitted based on documentary evidence only suggesting that the following document supports their claim that these routes should be recorded as Bridleways.

Wrington and Burrington Enclosure Award (1913)

The Applicant has referred to the map attached to the Wrington and Burrington Enclosure Award

Route A-B is illustrated with parallel dashed lines that are coloured orange and are shown crossing a field to Point B. What can be seen is that this depiction continues into the next field towards Havyet Lodge. Also depicted across that next field is another double pecked lined route labelled FP. This is currently recorded on the Definitive Map as the continuation of Footpath AX30/10.

Similarly, route C-D is also illustrated with parallel dashed lines that are coloured orange and are shown crossing a field to Point D. This depiction also has the lettering FP adjacent to it. However the depiction and colouring ends at Point D whereby it then joins onto the farm track to point E.

It is not clear as to why these areas are coloured green however they do match the areas of land which are today recorded on the Commons Register. It could be suggested that this Enclosure Award which is a lot later than others made for the area was specifically to establish this land as Common Land.

The applicant has referred within their application that a document exists which was presented within a previous Definitive Map Modification Order application, Copthorn Lane, however a copy has not been provided and at this time no record of this document has been found.

An extract of this map is attached in **Document 5**.

Analysis of the Additional Documentary Evidence

The claim submitted by the applicant is based only on one piece of documentary evidence, no user evidence 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.

Wrington Tithe Map and Apportionment (1840) Somerset Record Office Ref: D/D/Rt/M/97 and D/D/Rt/A/97

On the Tithe Map that represents the Parish of Wrington, the claimed routes are not specifically shown. However we are able to establish the area in which they would be located and can still identify the points on the map which is attached in **Document 3**.

The two fields and highway that the routes are located on is numbered 753 which with reference to the apportionment states that the land is owned by Harry William the Duke of Cleveland, to which is occupied by William Parker and describes the land as 'Havyet Farm'.

The Apportionment is attached in **Document 4**.

Finance Act (1910) North Somerset Council

Unfortunately I am not in receipt of a copy of the relevant section of the Finance Act plans for the area of Havyatt Common, so I am unable to produce an analysis on this.

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. These extracts are taken from the OS sheets for 11SW and 18NW which relate to the parishes of Burrington and Wrington and illustrate the area of land over which the claimed routes within Havyatt Common cross.

Route A-B is illustrated with a dashed line that runs the full length of its route, to which point B would enable access to Havyatt Lodge and Farm that is labelled on the map.

Similarly from C-D the route is presented on the map with a dashed line and indicates the symbol 'F.P'. This leads the full length to point D whereby it then ends and joins onto the track leading to Point E. This track is coloured yellow which indicates that at this time the route was considered to be a minor highway. This implies that it was maintained by the local authority. However, the rest of the routes are not coloured in any way.

These Maps are attached in **Document 6 and 7**.

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 definitive map illustrates both the claimed routes of A-B and C-D but not the section D-E. These are depicted as Footpath AX30/10 and AX30/60.

No evidence has been found to show that any challenges were made to the depiction of these routes during the Definitive Map Process. This map is shown in **Document 8**.

Consultation and Landowner Responses

A pre-order consultation letter was sent to adjoining landowners and interested parties on the 27th July 2017. The following responses have been received.

Consultation Responses

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

Name	Objection or Supporter	Comment
Green Lane Protection Group	No Objection	No wish to make a representation on this one.
Bristol Water	No Objection	We wish to inform you that part of the bridleway will be in our easement strip which extends 2.5 metres either side of the pipeline and within which any proposed construction works would be strictly regulated. We shall also require vehicular access along the length of the pipeline at all times and therefore your proposals should take this into account. You should also ensure that no reduction in cover to increases in ground levels, more than 200mm over out pipeline, take place. We confirm that we have no objection to the proposed modification of the bridleway so long the above requirements are adhered to.
Virgin Media	Information	I enclose a copy of our above referenced drawing, marked to show the approximate position of plant owned and operated by Virgin Media. You will be aware that you have a duty to ensure that no damage results to this apparatus may contain Fibre Optic, Coaxial and/or 240v Power Cables and as such, special care must be taken when excavating this area.
Atkins Global	Objection	We confirm that Vodafone has apparatus in the area and advises that we have a qualified objection to the order unless you, or your applicant, provides WS Atkins with written assurances, quoting our reference, as to the safeguarding of Vodafone apparatus and the reimbursement of costs for any works necessary. As-built records showing our apparatus enclosed.
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.
Mark Palmer – Openreach	No Objection	Openreach does not appear to have plant in the area of your proposals. Openreach will not object to this order, however, we will insist on maintaining our rights under the appropriate legislation. If plant has to be resited then charges will be raised to recover these costs. Please ensure that the developer/owner is aware of this information; if you have any queries regarding this matter please do not hesitate to contact me.
V Craggs – Woodspring Bridleways Association	Information	There were 3 different Commons on the network of ways connecting them with the existing Highways. So only parts of the ways were Awarded the remaining lengths were pre-existing evidenced by the Award Map.

The Tythe map show they are vested in the Highway Warden because they were Private Roads the responsibility of the Highway Warden, was only extended to keeping them in the same condition that they had always been.

All this info is on the Tythe and I.A.

There was evidence attached IA copy in the Copthorne Lane File ETC. Also Seem to remember sending in the Burrington Commons Regulations. Identical to The land on the Mendip Hills.

I have a photo where they have a portable Cattle grid with no walkway at the side, electric fencing.

A Brown

Objection

I wish to lodge an objection to these proposals for the following reasons:-

1. My family have lived as Havyatt Green for 101 years and I have lived here for 72 years. Our farm completely surrounds Havyatt Green and during all the time I have lived here I have NEVER seen a horse or a cyclist use either of these footpaths. Equally I never heard my father, who moved here in 1916, talk about horses using these footpath either.

2. Both these footpaths finish on the A38. Footpath AX30/60 meets the A38 at point C on the map, just before the worst corner for miles on the A38. We own the land adjacent to this bend and regularly have cars, and indeed on occasions lorries, leave the road here and smash through the fenced hedge into our field. These accidents can be verified by police incident records as they are regularly called to the scene. Indeed currently there is a great hole in this hedge where a car has gone through it and one of the safety chevrons is smashed.

Footpath AX30/10 meets the A38 at point B on your map, another very dangerous stretch of road. Indeed in 1985 a pedestrian, Gwen Langman, was KILLED here attempting to cross the road.

3. Havyatt Green is open access land and as such is unfenced along the A38 which at this point has the national speed limit of 60mph. It is common land with grazing rights for stint holders one of whom is ourselves. In order to exercise our grazing rights we have permission from the Conservators of the common to erect a temporary electric fence along the A38 and the access road leading to Copthorn House. Any Bridleway permitted across the common would severely compromise our ability to exercise this right.

4. Footpath AX30/10 from points A to B would appear to be a needless bridleway.

5. In a NE direction footpath AX30/60, links up eventually to with Ashley Lane at a VERY dangerous junction. In a southerly direction it meets Copthorn Lane which is already a designated bridleway. As a point of information for some reason horses get spooked by Copthorn Lane. On many occasions I have called upon to assist with situations where horses have bolted or got into difficulties using this bridleway. On one such occasion the horse threw its rider and proceeded to bolt straight across the A38 narrowly avoiding the fast moving traffic. The consequences of this incident could easily have been too horrific to contemplate. As a result of these issues very few horses ever attempt to use this bridleway. In addition to this the southerly point of Copthorn Lane meets the A368 at a very dangerous blind spot.

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.

No evidence has been submitted to either suggest that use has been challenged or that these claimed routes have been used at all. Therefore deciding on the period when a date of challenge could be established is extremely difficult.

Summary of Evidence and Conclusion

Summary of Documentary Evidence

The documentation which has been looked at dates back to the Wrington Tithe Map 1840. This map illustrates the land similar to how it is today but does not illustrate any routes across it.

The Enclosure Award dated 1913 is based upon an early OS Map. I have undertaken a comparison with an 1888 OS Map which has confirmed that this is not the same. Therefore the presumption is that the base map is 1903. It has not been possible to identify the routes coloured in Orange within the award, therefore no distinction can be made. However this area of land is now Common Land and it could be that this document was to record the existence of the Common and the public footpaths which currently cross it.

The base map (1888) for the 1930 Handover maps show the alignment of the claimed routes as depicted upon the Definitive Map as footpaths.

Taking the documentary evidence which is detailed in this report no evidence has been seen which would support the suggestion that these routes should be recorded as Bridleways.

Therefore, based on this documentary evidence, the Officer does not feel that the evidence supports the claim that these routes should be Bridleways.

Summary of Landowner Evidence

As detailed within **Appendix 5** out of the consultation which received 8 responses. 2 responses are objections, two offering information, no responses of support and four confirming no objection. One of those objecting has provided information relating to their personal knowledge of the area of land. No further evidence was submitted which could have been included within this report.

In addition to this no user evidence has been submitted to support this application.

Conclusion

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

Having regard for the legal tests that should be applied.

In regard to the routes A-B and C-D as these are already public footpaths the higher test of “ought” to be shown as a route of a different status needs to be applied. Despite the applicant’s belief that these should be shown as Bridleways, no evidence apart from the Enclosure Award plan has been submitted to support this claim.

In respect of the route D-E “does a route subsist or is reasonably alleged to subsist”. The historical evidence shows that a farm access track has been in existence since 1840 and that track has been considered in the past to be a route maintained by the local authority, albeit of a very minor nature. Today this route is recorded as an unclassified highway called Copthorn Lane and provides connectivity to Bridleway AX30/67. Therefore public rights already exist over this route.

Based upon all of the information contained within this report it is felt by this officer that there is insufficient evidence to support this application.

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade A-B Footpath AX30/10 to a Bridleway.
2. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade C-D Footpath AX30/60 to a Bridleway.
3. Whether the evidence supports the making of a Definitive Map Modification Order to add the route D-E as a Bridleway to the Definitive Map.
4. Whether this application to upgrade Footpath AX 30/10 and Footpath AX30/60 to Bridleway and to add the section D-E as a Bridleway should be denied as there is insufficient evidence to support the making of an Order.