

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
DUCK LANE TO LADYMEAD LANE**

TOWN OR PARISH: CHURCHILL

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

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

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 which was made on the 21 July 2004 by Woodspring Bridleways Association claiming that a particular route, in the Parish of Churchill which runs along the lines of Footpaths AX14/44 and AX14/46, and a short section being un-recorded, should be recorded for its full length as a Byway Open to All Traffic. Such application for a Definitive Map Modification Order is submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of this request, should an Order be made and confirmed, would be to amend the Definitive Map and Statement for the area.

The applicant have detailed and attached documentary evidence and archaeological evidence which they consider to be relevant.

The claimed route is illustrated on the attached Location plan (EB/Mod 55). The initial section of the claimed route from point A to the first bend is recorded as Footpath AX14/44, the route then proceeds in a westerly direction where it is then recorded as Footpath AX14/46. It continues as Footpath AX 14/46 through point B, southerly towards point C however deviates from the line of the footpath around the edge of the field before resuming the line of Footpath AX14/46 at point C and onwards to point D where it meets the adopted highway and onwards to Ladymead Lane.

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 considered are included in the Appendices to this report, listed below. Also listed below are the Documents that are attached to this report. Members are also welcome to inspect the files containing the information relating to this application, by arrangement with the Public Rights of Way Section.

LOCATION Plan (EB/Mod 55)

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 – Consultation and Landowners Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – Application submitted by Woodspring Bridleways Association

Document 2 – Day & Masters Map 1782

Document 3 – Ordnance Survey Map 1811

Document 4 - David and Charles 1817

Document 5 – Greenwood Map of Somerset 1822

Document 6 – Churchill Tithe Map 1840

Document 7 – Bartholemew's ½" revised Map of North Somerset

Document 8 – Handover Map 1930

Document 9 – Definitive Map 1956

Document 10 – Objection submission by Mr P Harrison

Document 11 – Objection submission by Mrs M Masters

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 Environment, 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 section 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 Footpath AX14/44 and AX14/46 is whether, given the evidence available, that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and;
2. Section 53(3)(c)(i) relating to the section which is currently unrecorded is whether, given the evidence available that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

If the Committee is of the opinion that the relevant test has been adequately met, it should determine that a Definitive Map Modification Order should be made. If not, the determination should be that no order should be made. See Appendix 1.

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 Churchill 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 the route A-B-C-D.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for the route A-B-C-D.

AUTHOR

Elaine Bowman, Senior Access Officer Modifications, Access Team, Natural Environment
Telephone 01934 888802

BACKGROUND PAPERS: - Public Rights of Way File Mod 55

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 Bridleway 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

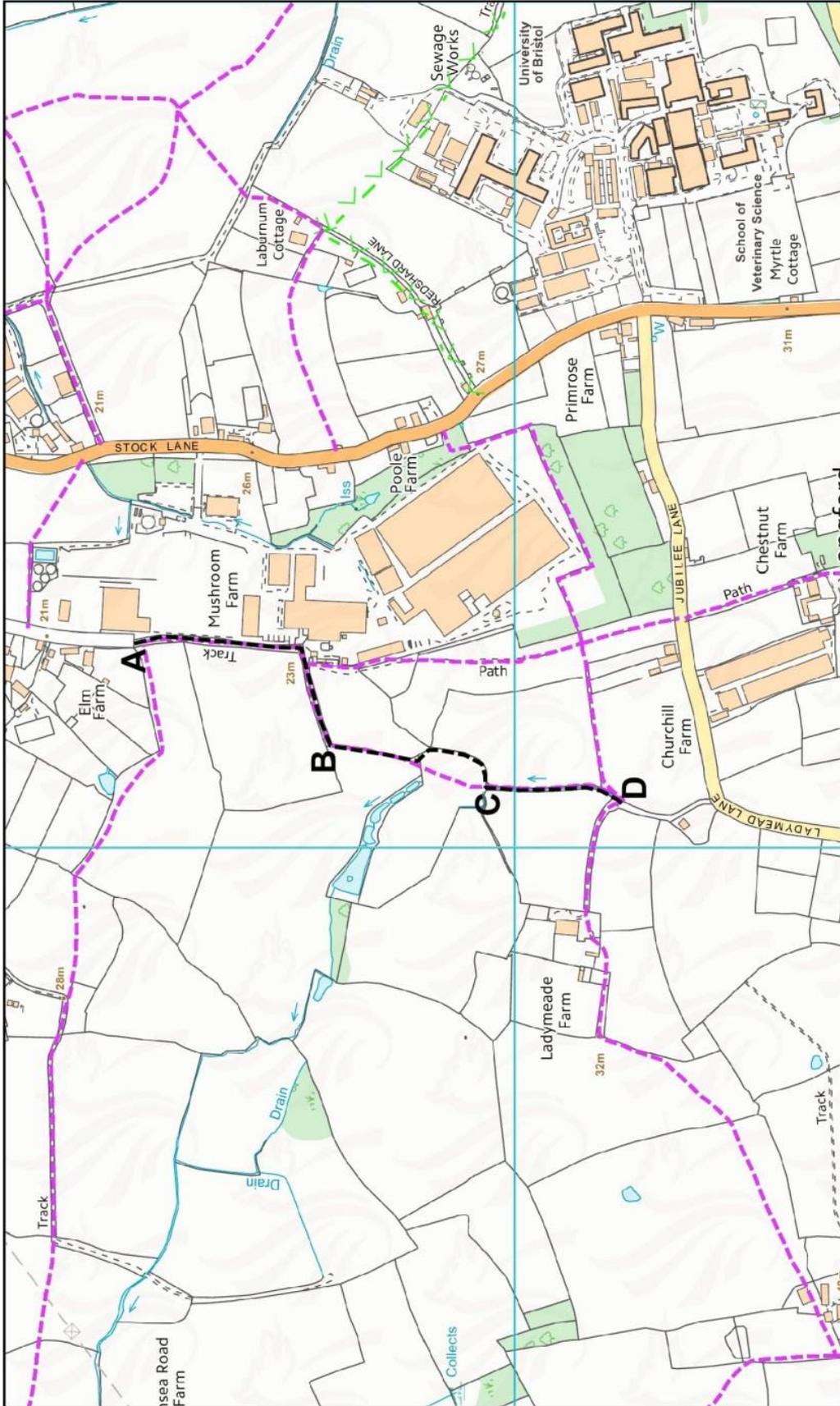
(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

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 path can be shown to be a public right of way, it is acting in a quasi-judicial role. It must look only at the relevant evidence and apply the relevant legal test.

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

Location Plan EB/MOD 55



MOD 55 - Duck Lane, Churchill
 Claimed BOAT (Grid Ref: ST4561)

Public Rights of Way

Scale: 1:6000
 Drawn by: Lucy Roca
 Date: 01 August 2017
 Time: 11:04:18



Castlewood, Tickenham
 Road, Clevedon, BS21
 6FW

© Crown copyright and database rights 2017. Ordnance Survey 100023337. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form. © aerial photography 2000 and 2014 imagery copyright GeoMapping P.C. www.geomapping.com © and database right Crown Copyright and Landmark Information Group Ltd. All rights reserved 2017.

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 21 July 2004 from Mrs V Craggs representing Woodspring Bridleways Association ("The Association"). The basis of this application was that the route A-B-C-D should be recorded as a Byway Open to All Traffic. The applicant listed upon their claim the documents which were felt relevant and the details of the landowners notified of the claim.

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

1984 OS Map
1966 A K Johnston 3 Miles to 1 Inch Motor Coloured and Contoured Map
1949/56 OS Map
1946 OS Map
1940 W & A K Johnston Ltd Road Atlas 3 miles to 1 inch Map
1902 OS 2nd Edition Map
1938 Bartholomew's 1/2" Map of North Somerset
1840 Churchill Tithe Map
1822 Greenwood Map
1817 David and Charles Map
1811 OS Map
1782 Day and Masters Map
County of Avon Smallholdings survey of Churchill Park Farm, Langford.

The above documents will be reported on in chronological order **Appendix 3**.

This matter is currently recorded on the Definitive Map Register as Mod 55.

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 2004 application claims that a Byway Open to All Traffic should be recorded over a route which runs between Duck Lane and Ladymead Lane. Sections of this route are recorded on the Definitive Map as Footpaths AX14/44 and AX14/46 (A-B-C), with some sections unrecorded. It is not clear as to whether the claimed route between C-D is on the line of Footpath AX14/46 or the stream bed which runs parallel. The claimed route falls in the Parish of Churchill.
3. The claimed Byway Open to All Traffic is illustrated as a bold black dashed line on the attached Location Map (scale 1:6000).

Applicants Evidence

The claim is based on documentary evidence suggested by the applicant, of which the route is illustrated A-B-C-D on the Location Map (Scale 1:6000).

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. A copy of the application is attached to this report as **Document 1**.

Day and Masters Map (1782) North Somerset Council

This plan shows a route upon the same alignment as the claimed route and suggests that the route was available as a through route between points A-B-C-D, Duck Lane to Ladymead Lane but does not assist with status. An extract of this plan is attached as **Document 2**.

Ordnance Survey (1811) North Somerset Council

This map shows a route upon the same alignment as the claimed route similar to that shown on the Day and Masters Map whereby the route was available as a through route between points A-B-C-D, however the map does not assist with its status. An extract of this plan is attached as **Document 3**.

David and Charles Map (1817) North Somerset Council

This map illustrates the route A-B-C-D similar to that shown on the Day and Masters Map illustrating the route as a bounded track. Once again it should be noted that this plan shows routes whether they were through routes or those to properties, however the map does not assist with the status of the route A-B-C-D. An extract of this plan is attached as **Document 4**.

Greenwood Map of Somerset (1822) North Somerset Council

This map illustrates the route A-B-C-D on a different alignment to that shown on the above two maps. Visually the route is obscured due to the depiction of a dashed boundary marking. Once again, its depiction on this plan does not provide evidence of its status only that a through route existed on the ground. An extract of this plan is attached as **Document 5**.

Churchill Tithe Map (1840) North Somerset Council

This map illustrates the claimed route, A-B-C-D from Duck Lane to Ladymead Lane as an enclosed route, which is depicted in a similar manner to all other highways on the map. However there is no reference on the map as to the status of this particular route or whether its maintenance fell to the parish way wardens. An extract of this plan is attached as **Document 6**.

Ordnance Survey Map 1902

The applicant has referred to 1902 O.S. mapping within the correspondence from Woodspring District Council, however no copy has been found.

Bartholomew's 1/2" Revised Map of North Somerset (1938) North Somerset Council

This map produced in 1938 and revised in 1947 and 1965 shows the start and finish of the claimed route A-B-C-D. However unlike the other maps it doesn't show the claimed route as a through route. On this map the route is shown from point A as a bounded track which when it gets to point B is depicted as a dashed line across the field until it reaches the junction of Ladymead Lane and Jubilee Lane. The key to this plane states that routes depicted in this way are "other Roads & Tracks. Once again, its depiction on this plan does not provide evidence of its status only that routes accessing a field existed on the ground. An extract of this Map is attached in **Document 7**.

W and A K Johnston Ltd London to Edinburgh Road Atlas 3 Miles to 1 Inch (1940)

The applicant has referred to the 1940 W and A K Johnston Road Atlas stating that the route is shown clearly as all other roads in the area, however no copy has been provided.

Ordnance Survey Map (1946)

The applicant has made reference to an OS 1946 map within their application stating that there is a footpath/bridleway in the middle section of the route with roads at either end, however no copy has been provided.

Ordnance Survey Map (1949/56)

The applicant has made reference to an OS 1949/56 map within their application that this shows as pecked line footpath/bridlepath with road either end, however no copy has been provided.

A K Johnston 3 Miles to 1 Inch Motor Coloured and Contoured Map (1966)

The applicant has made reference to the 1966 A K Johnston Motor Coloured and Contoured Map within their application stating that this document shows the claimed route A-B-C-D clearly as all other roads in the area, however no copy has been provided.

Ordnance Survey Map (1984)

The applicant has made reference to an OS 1984 map within their application claiming that this shows an old track up the stream bed at the western end of the Lane and shown as an old track at the eastern end, both ends are Public Footpaths. The footpath in the middle field runs approximate to the old road. A copy of this document has not been provided.

County of Avon Smallholdings Survey of Churchill Park Farm, Langford.

The applicant has also referred to the Smallholdings Survey produced by Avon County Council relating to Churchill Park Farm, Langford (date unknown). Within this survey, it describes the historic and current attributes of the route known as Duck Street, of which includes sections of the claimed route A-B-C-D;

'Its name, together with that of 'Duck Lane' which it joins at Stock, is still a puzzle, but the 'Street' element, which suggests a metalled road, is often of Roman origin. It certainly pre-dates King Road which deviates through two sharp right angles as it crosses the street in order to follow the older line for a short distance before continuing its north-south course. The street can be traced westward to Sandford where it merges with the Banwell Road (A368), and eastward across the middle of Park Farm to a fork where it branched southward most of it was already stopped up by the early 19th Century, it is noticeable that the remaining Public footpaths between Ladymead Lane and Lower Court Farm still closely follow the alignment of the old highway. It is worth noting here that there are signs that the area to the north and west of the farm may have been crossed by a complex network of ancient tracks, perhaps associated with the Parish Boundary and influencing the outline of the farm and the park which preceded it, but this requires further study.'

The document also includes a map of the region illustrating the section of Duck Lane and Ladymead Lane in the top left corner. These documents are attached in **Document 1**.

Analysis of Additional Documentary Evidence

In addition to the evidence suggested by the applicant and 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.

Banwell and Churchill Inclosure Award (1797)

This document, produced in 1797 only relates to the Commons and Waste lands and does not include the route which is the subject of the claim.

Handover Map (1930)

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.

As we can see from the map, the claimed route is labelled as Ladymead Lane. However the route is not coloured in anyway. Therefore implying at this time the route was not considered to be part of the public highway network or maintainable by the highway authority. The plan does however show the route to be enclosed at for its full length, confirming its existence but does not assist with its status. What should be noted is that at this time the depicted footpath does not follow the alignment of the claimed route. An extract of this plan is attached as **Document 8**.

Definitive Map (1956)

The Definitive Map was prepared by Somerset County Council in accordance with the requirements of the National Parks and Access to the Countryside Act 1949. Surveys carried out by the Parish Councils led to the preparation of Draft Maps.

At that time the Parish Council produced the walking cards which recorded Footpath AX14/44 (extract relevant to this section) as “....to wooden stile in Flood (Jubilee Lane). Cross lane to wooden field gate – across ploughed field to cross FP 45 to wooden field gate – across grass field to wooden field gate – across grass field to wooden field gate into Ladymeade Lane” and Footpath AX14/46 as “Footpath starts at wooden stile in Duck Lane. 400 ft south of Elm Farm, across grass field to wooden stile, across stubble field to wooden stile, across grass field to wooden field gate, across grass field to iron gate in Ladymeade Lane”

The mapping illustrates these two routes as described, not on the same alignment as that being claimed. The base map depicts the title of Ladymead Lane at the northern end of the claimed route. However that bounded track then stops above the FP depiction. What also can be seen from this plan is the coloured route north of point A and south of point D which are acknowledgement that these were recorded as highways maintainable by the local authority. An extract of this plan is attached as **Document 9**.

Consultation and Landowner Responses

A pre-order consultation letter was sent to adjoining landowners and interested parties on the 1 August 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
Virgin Media	No Objection	Virgin Media and Vital Plant should not be affected by your proposed work and no strategic additions to our existing network are envisaged in the immediate future.
National Grid	No Objection	Searches based on your enquiry have identified that there is no record of apparatus in the immediate vicinity of your enquiry. Candent and National Grid therefore have no objection to these proposed activities.
Bristol Water	No Objection	<p>Please find attached a copy of the ordnance survey sheet upon which we have marked the sizes and approximate positions of our mains, which are normally laid with 900 mm of cover. Should you propose to carry out any excavation in the vicinity of our apparatus please contact our Customer Services Helpline, on telephone number 0345 702 3797, preferably five working days prior to starting work, and ask to speak to a Network Distribution Technical Manager or Network Administrator.</p> <p>The information given shows the approximate location of our 33"CI diameter raw water main but it will be necessary to take trial excavations to assess its precise position and depth. This work can be carried out by the company with the cost being recharged to the developer and approximate costs are available on request.</p> <p>We wish to inform you that part of your proposed Byway open to all traffic, from A to B, will be in our easement strip which extends 4 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 ensure that no reduction in cover or increases in ground levels, more than 200mm over our pipeline, take place.</p> <p>We confirm that we have no objection to the proposed stopping up order of the Byway open to all traffic A-D so long as the above requirements are adhered to.</p>
Openreach	No Objection	<p>Thank you for the details of the proposed modification of the definitive map, dated 1st August 2017 with the relevant plan. Openreach does not appear to have apparatus in the vicinity of your proposals.</p> <p>Openreach will not object to this order, however, we will insist on maintaining our rights under the appropriate legislation. If any of our plant needs to be relocated then charges will be raised to recover these costs.</p> <p>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.</p>

Clerk to
Churchill
Parish Council

Objection 'provisional'

At this meeting Churchill Parish Council does not support the proposed modification. No details of the application or any supporting evidence justifying the need for such a modification have been furnished. The Parish Council will wish to consider the application in further detail at a future meeting. The Clerk is to write to North Somerset Council requesting that they :-

- Provide detail of the application together with all supporting evidence that the applicant has provided, particularly relating to the need, justification and purpose of such a modification.
- Should this information not be available at this time, North Somerset Council to consider the correspondence of 15th August 2017 that will be sent to them by the Clerk as a Freedom Of Information request for that information be furnished to the Parish Council when available.
- Extend any deadline for comments to at least late October in order that the Parish Council have time to consider the matter further and submit an additional response if they so wish.
- North Somerset Council to inform the Parish Council of any proposed date for the matter to be considered by their Council's Rights of Way Sub Committee to enable the Parish Council to make further representations should they so wish.

M Masters on
behalf of Mr &
Mrs Edwards

Objection

Your letter in the above matter dated 1 August 2017 which was addressed to Mr. & Mrs. R. Edwards of Brinsea Green Farm has been passed to me for attention - I shall be grateful if you will register that Mrs. Delia Edwards today confirmed that both she and her son Ross wish me to represent their interests. I note that your letter advised that the WBA Application was submitted in July 2004 [13 years ago] and that North Somerset Council has recently been instructed to process this particular Application by 31 December 2017 ; that if Mrs. Edwards and her son wish to comment, this must be done by 26th September. In the circumstances and acting in the best interests of Mrs. Edwards and her son Ross, it would be extremely helpful if I could see and examine the evidence which was/is attached to the WBA 2004 Application and shall therefore be grateful if you will provide me with copies of all the relevant material. Plus a copy of the Certificate of Notification to the landowner/s. I am of course willing to pay a reasonable copying charge if necessary. My apologies if this adds to your workload but it stands to reason that comments can only be submitted after the details of the evidence attached to the Application are known.

Wales and
West Utilities

No Comment

Professor J
Bourne

Objection

Thank you for inviting comments on the above proposal. It has taken some time to peruse various documents in relation to this proposal and the claim that this was a bridleway in the distant past. I find no historical or more contemporary evidence to support this claim. I have lived in Jubilee Lane for most of my life and am very familiar with the footpath denoted by you as B to C to D. As well as being unable to find any historical evidence

to support that it has ever been anything other than a footpath, I find that none of my contemporary's, octogenarians or older, who I have consulted can provide evidence to the contrary. Both ends of this lane have been used historically by farmers to service adjoining fields, but in the middle (B to C to D) has only ever been a footpath.

There are of course also current compelling and pragmatic reasons why this footpath should remain as such. The path leads from Duck Lane to Ladymead Lane and Jubilee Lane (Plood Lane on historical maps). Both Ladymead Lane and Jubilee Lane are single track and heavily used by traffic, particularly Ladymead Lane, to and from a large Doctors Surgery and the Primary School. They also serve a very large and increasing number of dwellings; to encourage more traffic, horses, Off Road vehicles etc would present a serious hazard to local community members and other users of these lanes. I believe that to change the derogation of B to C to D from a footpath to a Byway Open to All Traffic has no historical support nor would it be in the best interests of residents of the wide community of Churchill and Langford.

D Mallinson Comment

I would like to make the following comments on this application, in response to your letter of 1 August.

1. The applicant, Woodspring Bridleways Association (WBA), listed three items of documentary evidence in support of their application. However they did not provide one of these items that listed as a copy of a letter (to or from?) Russ Currie. This means that this application does not qualify for exemption of unrecorded public motor vehicular rights under section 67(3) of the NERC Act.

2. WBA rely on the suggestion, in their extract from the historical landscape and conservation report by Mike Chapman and Pamela Bury on Churchill Park Farm, Langford, that Duck Lane and Ladymead Lane are the northward and southward continuations of "*an ancient track*" which itself was thought to be a continuation of Duck Street (the subject of application Mod 54). Chapman and Bury say that the ancient track is on the Sites and Monuments Record as number 1528. However North Somerset Council's online record of archaeological sites (<http://map.n-somerset.gov.uk/HER.html>) does not show any sites on Duck Lane, Ladymead Lane or the line suggested for the ancient track by Chapman and Bury. It does show a site in the vicinity of Duck Street as an archaeological site, number 01528.

It looks to me as if Chapman's and Bury's suggestion of an ancient track has been revised by subsequent archaeological expertise, and that only a site in the vicinity of Duck Street is now accepted by North Somerset Council's archaeologist as an ancient track. The fact that none of the historical maps cited by WBA in their letter to Mr Trevett and Mr Broadbent show a way connecting Duck Street with Ladymead Lane and Duck Lane is also

Mr G Plumbe Objection

an argument against Chapman and Bury's suggestion that these routes formed a historic highway network. I object to the proposed modification because any pre-existing public vehicular rights have been extinguished. My reasons are

Facts

The application, in respect of listed evidence relied on in support, says: "I/We attach copies of the following documentary evidence

(iv) Documentary evidence attached maps Park Farm Chuchill Archaeological Sites and Features owned by ACC now NSDC

Copies of 2 letters Russ Currie (?) Trevett and Broadhead.

The law

NERCA 2006 – 67 Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement..... But this is subject to subsections (2) to (8)

(3) Subsection (1) does not apply to an existing public right of way over a way if (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modification to the definitive map and statement so as to show the way as a byway open to all traffic,

SCHEDULE 14 TO THE WILDLIFE AND COUNTRYSIDE ACT 1981

Application for certain orders under part III, Section 53

Form of application

1 An application shall be made in the prescribed form and shall be accompanied by –(a)

(b) copies of any documentary evidence (including statement of witnesses) which the applicant wished to adduce in support of the application.

In the *Winchester* appeal case it was held that the regulations must be strictly applied. That was upheld by the Supreme Court in the *Dorset* case.

Validity of application

There is no letter in the name of Russ Currie, either to or from. The application does not therefore qualify for exemption from extinguishment under NERCA s63(3).

Relevance of evidence

I endorse and adopt the comments of Mrs Mallinson in her letter of today's date.

Mr P Harrison Objection
Landowner

On 5th August 1996 I received the attached letter from Mrs Craggs and I enclose a copy of my reply.

Mrs Craggs had been to see me earlier. She expressed her wish for there to be a bridleway and asked that I dedicate land to enable this to come about – the works to be paid for by her. The implication being that if I did not, she would suggest that the stream/track was a "byway open to all traffic" (BOAT). The suggestion as expressed by the third paragraph of this letter is that the track,

namely now the stream, would become a bridleway with access through our gate.

Her tone was always accompanied by an air of menace if you don't dedicate we will apply for a 'Boat'. That said if it did become a Boat, its use as a bridleway would be difficult. Following that meeting she called unannounced with a positive threat that if I did not dedicate land she would apply for a Boat.

At this point I insisted she left my house and I then wrote to the Highways Office at North Somerset Council on 4th December 1996. Copy letter enclosed.

Mrs Craggs' objective is to create a bridleway to link Duck Lane in the north and Ladymead Lane by our gate and I suggest the benefit to riders must be in question. Duck Lane access at Stock Lane is a hazard to any horse rider. Ladymead Lane from our gate to the A38 is already a busy through way to the School and Doctors' Surgery in Pudding Pie Lane and access onto the A38 by horse is at best unwise and probably dangerous.

The letter from Mrs Craggs to Mr Trevett and Mr Broadhead makes the suggestion that the route was used in the early 1900s but provides no evidence as to this. In addition the suggestion is that the stream is owned by the Highways Department but there is no confirmation that this is so and indeed I believe it to be unlikely. Dedication as a highway stops at our gate.

On 12th November 2004 following receipt of a notice left in our porch I wrote again to the Highway Authority, copy letter attached.

In clarification of the fifth paragraph in my letter I add that it is my understanding that when Broadoak, a housing estate off Pudding Pie Lane, was developed a new storm water drain was laid in Ladymead Lane between Pudding Pie Lane and our gateway removing the open ditch except for the small ditch between Ladymead Cottage and our gate. This drain discharges into what is now a stream created by this storm drain which ends in a 3ft vertical outfall beside our gate. This 'stream' discharges into a 9inch pipe on the western side of the stream at the most northerly point of our land ownership. I assume that consent was given for this work with the Local Authority approval.

Ladymead Farm was sold by auction in 1878 with some 40 acres of land and bought by a Dr. Petheram. The land and our house was farmed and accessed using the existing gate. The land was sold by the estate of the late Dr. Petheram and bought by a Mrs Jones in 1924. Her daughter married a Mr Griffen and Mrs Griffen and her son, who is still alive, sold us the farm house and 13 acres in 1992. Tony Griffen has no knowledge of a bridleway. The remaining land was bought by the Edwards family.

Ladymead Cottage is still owned by a direct descendant of Dr. Petheram, and was built we believe for his daughter. Mrs Heather Lee, the current owner of Ladymead Cottage lent me a photograph of her family

beside our gate taken I believe in about 1900. This gate is still in situ. There is no evidence of a bridleway in this photograph. Mrs Lee was born in Ladymead Cottage and has no recollection of a bridleway through our field. I confirm that I was aware of the public foot path through the field leading towards Duck Lane but other than that footpath, legal searches showed no bridleway or access across our land. The Ordnance Survey maps do show a public footpath. It further suggests that the alignment of the stream to the east of our land aligns with Duck Lane. See attached plan.

I am unable to find anyone alive who can confirm the use of the stream for horses, let alone a bridleway open to all traffic. Those farming Ladymead Farm would not use the stream and those from the north end of the then farm could either be from Duck Lane or access across fields owned by the farmer.

Further it appears that Mrs Craggs wishes to open what purports to be a Roman Road connecting Ladymead Lane, through Churchill Park Farm to Churchill. This route would go through the estate wall of Churchill Park Farm, it is not designated as a footpath or any other form of route and I suggest this is an unhappy use, if not a misuse, of the Countryside Act. [The Copies of documents referred to within this letter will be attached to this report as **Document 10**]

Mrs M Masters Objections
representing
Mrs D
Edwards and
Mr Ross
Edwards

Response to the Application on behalf of Owners Mrs D Edwards and Mr R Edwards [Son]

In Summary therefore:-

In order to comply with statutory requirements for a Definitive Map Modification Order it is necessary to “discover” evidence which was previously unavailable and therefore not previously seen or considered. There should also be good reason why it was not produced earlier.

The Applicant has failed to provide any evidence of public vehicular *use* – or evidence of public maintenance [to the level of vehicular traffic] of the claimed route.

The Woodspring Bridleways Association Application submitted on 21 July 2004 spectacularly fails to comply with statutory requirements.

The Application simply re-cycles evidence already considered and attempts to rebut the presumption of regularity - and in doing so seeks to establish that the Parish, District and County Councils did *not* do everything correctly.

The Responses provided herewith reveal that the Application can [unequivocally] be seen to be frivolous and vexatious and should be rejected. [A copy of the full objection submitted by Mrs Masters is attached to this report as **Document 11**]

When considering this matter it should be remembered that applications must be decided on the facts of the case, factors such as desirability or suitability cannot be taken into consideration.

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.

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.

No evidence has been submitted to illustrate that this route has been used either on horseback or in a vehicle of any kind. Therefore this application will be determined upon historical evidence alone.

Summary of Evidence and Conclusion

Summary of Documentary Evidence

Taking all of the documents detailed within this report into consideration the majority of these illustrate a bounded track running between Duck Lane and Ladymead Lane. The applicant is relying upon such depiction as the existence of a route capable of being used by all methods of transport since 1782, however the fact that these are depicted does not confirm status.

As detailed in Appendix 4 the depiction of this route with a title of “Ladymeade Lane” seems to suggest that this section was considered to be route of a higher status than others illustrated on the map. This is shown between points A and B of the claim. Despite this depiction there is no evidence to show that this route has ever been maintained as anything other than a footpath.

Maps such as Day and Masters, OS Map 1811, David and Charles 1817 all depict this route on a similar alignment. However, these plans were produced to illustrate everything not just highways. These clearly illustrate accesses to farm and properties. Greenwoods map of 1822 shows the route on a very different alignment.

The Tithe Map 1840 illustrates the route excluded from the adjoining fields but has no marking upon it to suggest the status. Bartholomews Map shows this route to now be representative of two cul de sac routes giving access to the fields, this supported by the fact that this is not coloured similar to other routes in the area which are known to be minor highways.

The Handover Map of 1930 illustrates the extent of the road which was considered to be adopted highway and maintained by the authority, the claimed route is not included within that depiction.

Finally, the definitive Map process which went through varying stages before its completion illustrates that the parties who knew and walked these routes believed them to be no more than Public Footpaths and that is how they are recorded on the Definitive Map today.

The applicants will suggest that this route has been illustrated on maps since 1782 showing a route capable of being used by the transport of the time, whether that was pedestrian, horse or horse and carriage (Once a Highway, Always a Highway). This may be true; however no evidence has been submitted that horse and carriage use has been made.

Under Common Law it is necessary to show that a route has been used, and such use accepted by the owners of the land for such use to come into being. Such use has not been shown to have existed.

Therefore, a judgement can only be made on the evidence placed before us and based on this documentary evidence, the Officer does feel that the evidence supports the claim that this route should be recorded as a Byway Open to all Traffic.

Consultation Responses

As detailed within Appendix 5 a total number of 12 responses were received. Four letters advising that no objection was made, two offering Information and six letters of objection.

Two of these objections come from owners of the land. The information contained within these objections clearly challenges the claim that is being made that the route A-B-C-D should be recorded as a Byway Open to all Traffic.

Conclusion

This application affects a route A-B-C-D which most of which is already recorded on the Definitive Map as a Footpath. 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.

Commencing on the first section A – B which is currently recorded as Footpath AX 14/44, then Footpath AX14/46 this is a bounded track on both sides. At point B the route enters into a field by way of a five bar gate and runs along the hedge line to the next field, another gate. At this point the claimed route leaves the public footpath and continues around the edge of the field, re-joining the footpath at point C. At this point it is not clear if the claimed route is the footpath which runs in the field or the stream bed to point D.

It is this officer’s opinion that neither of the tests detailed above have been met. In regard to the sections of Footpath AX14/44 and Footpath AX14/46 affected by this application, no evidence has been presented to support the claim that these routes “ought” to be shown as a route of a different status.

Similarly, in regard to the sections of unrecorded route, namely between point B and C around the field edge and along the stream bed no evidence has been submitted to suggest that a right of way “is reasonably alleged to subsist”.

Therefore, it is felt by this officer that taking all the documentary evidence detailed above submitted by the applicant and researched by North Somerset Council that there is insufficient evidence to support the claim that this route A-B-C-D should be recorded on the Definitive Map as a Byway Open to all Traffic.

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-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 A-B-C-D for a Bridleway.