

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 27 MARCH 2018

SUBJECT OF REPORT: MOD 53 UPGRADE OF PART OF FOOTPATH
AX29/78, UNRECORDED ROUTE AND PART OF
FOOTPATH AX29/41 ROMAN ROAD SANDFORD

TOWN OR PARISH: WINSCOMBE

OFFICER/MEMBER PRESENTING: DIRECTOR OF DEVELOPMENT &
ENVIRONMENT

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

1. The Public Rights of Way Sub Committee authorises 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 Restricted Byway rights should be recorded on the Definitive Map.
2. If the Committee accepts the recommendation of the Officer that an Order should be made for A-B-C-D that they authorise the confirmation of the Order if no representations or objections are received.
3. 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.

1. SUMMARY OF REPORT

This report considers an application which was made on the 18th July 2004. That application requested that a route, in the Parish of Winscombe, should be recorded as a Bridleway/Byway Open to all Traffic. This route is partly recorded on the Definitive Map as Footpath AX29/78 and AX29/41, the remainder being unrecorded. 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 application, submitted by Woodspring Bridleways Association, has provided reference to one document as the evidence upon which they wish to rely. No user evidence has been provided so this report will be based solely on historical documentary evidence. The claimed route is illustrated on the attached Location Plan EB/Mod 53/Sub as A-B-C-D.

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 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 53/Sub

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Analysis of the Documentary Evidence

Appendix 4 – Consultation and Landowners Responses

Appendix 5 – Summary of Evidence and Conclusion

Document 1 – Winscombe and Shipham Enclosure Plan 1799

Document 2 – British Library OS Map 1811

Document 3 – Greenwood 1822

Document 4 – Winscombe Tithe Map 1840

Document 5 – Finance Act Plan 1910

Document 6 – 1930 Highways Handover Map

Document 7a, b & c – Parish Walking Card Footpath AX29/78

Document 8a – Definitive Map Process Draft Map

Document 8b – Definitive Map Process Draft Map Modification

Document 8c – Definitive Map Process Provisional Map

Document 8d – Definitive Map Relevant Date 26 November 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 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 routes, A-B, B-C and C-D, two of which are currently recorded on the Definitive Map as Footpath AX 29/78 (A-B) and Footpath AX 29/41 (C-D) and the remainder which is not currently recorded on the Definitive Map (B-C), it is necessary for the Committee to have regard to two legal tests:

1. 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.
2. Section 53 (3)(c)(ii) relating to the sections recorded as Footpaths AX29/78 and AX29/41 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;

If the Committee believes in respect of each claimed section that the relevant test has been adequately met, it should determine that a Definitive Map Modification Order should be made. If not, the determination should be that no order should be made. See **Appendix 1**.

4. CONSULTATION

Although North Somerset Council is not required to carry out consultations at this stage Local members, interested parties, Winscombe and Sandford Parish Council and relevant user groups have been consulted. Detail of the correspondence that has been received following these consultations is detailed in **Appendix 4**.

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 Public Inquiry. These financial considerations **must** not form part of the Committee's decision.

Costs

To be met from existing Revenue Budget.

Funding

To be met from 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

1. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade A-B Footpath AX29/78 to a Byway Open to All Traffic / Bridleway.
2. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade C-D Footpath AX29/41 to a Byway Open to All Traffic / Bridleway.
3. Whether the evidence supports the making of a Definitive Map Modification Order to add the route C-D as a Byway Open to All Traffic / Bridleway to the Definitive Map.
4. Whether this application to upgrade Footpath AX 29/78 and Footpath AX29/41 to Byway Open to All Traffic / Bridleway and to add the section B-C as a Byway Open to All Traffic / Bridleway should be denied as there is insufficient evidence to support the making of an Order.

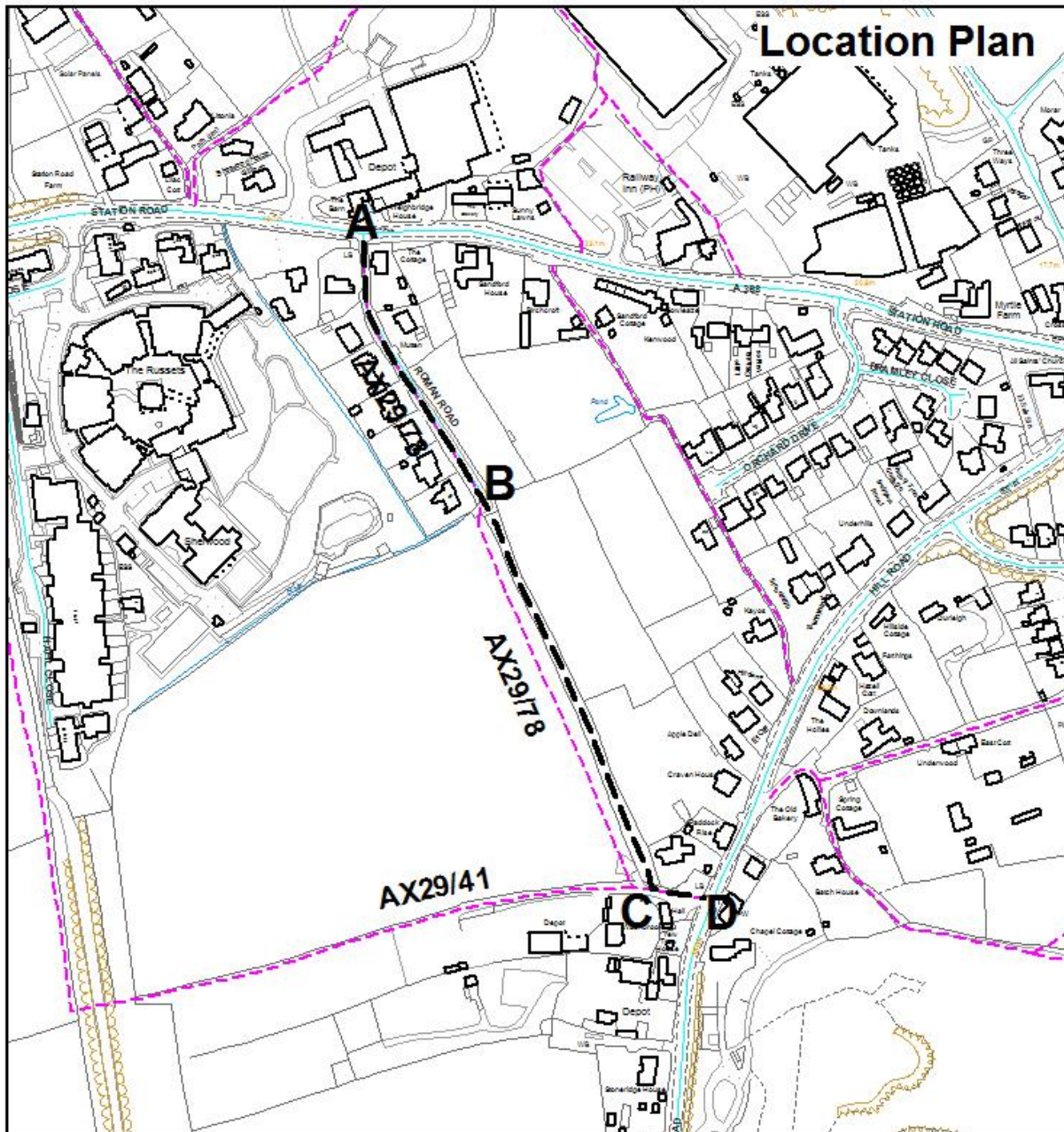
AUTHOR

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BACKGROUND PAPERS

Public Rights of Way File Mod 53

LOCATION PLAN



Wildlife & Countryside Act 1981 - Section 53 North Somerset District Council

Public Rights of Way Sub Committee 27 March 2018

Definitive Map Modification Order Application Roman Road Sandford



Development & Environment

Public Rights of Way
Streets and Open Spaces
North Somerset Council
Town Hall
Wallisote Grove Road
Weston-super-Mare
BS23 1UJ
Tel: 01934 888 802



Scale 1:3000



Date 6 March 2018

Grid Ref. ST4159

Map No. EB/Mod 53/Sub

Claimed route



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/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.

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 18th July 2004 from Woodspring Bridleways Association ("The Association"). The basis of this application was that a particular route, known as Roman Road should be recorded as a Bridleway/Byway Open to All Traffic. Submitted with the application was reference to one historical document which the applicant feels is relevant.

Listed below is the evidence that the Association referred to:

Shown on 1822 Greenwood Map to the present day as a through route
A pre-existing ancient route still enclosed

The above document will be reported on in **Appendix 3**.

This matter is currently recorded on the Definitive Map Register as Mod 53.

It should be noted that the Council has undertaken additional research into records that are held within the Council. These are detailed in **Appendix 3** of this report.

2. The 2004 application claims that a Bridleway/Byway Open to all Traffic should be recorded over a particular route A-B-C-D on the attached Location Plan, A-B being currently recorded as Footpath AX 29/78, B-C which is currently unrecorded on the Definitive Map and C-D being recorded as Footpath AX29/41. The claimed route affects a route in the Parish of Winscombe and Sandford.
3. The route being claimed commences at its junction with Station Road Point A and proceeds along Roman Road for a distance of 157 metres to Point B (where Footpath AX 29/78 continues into the orchard on the right hand side of the claimed route). The claimed route continues from Point B in a south-easterly direction for a distance of 232 metres to Point C, which junctions with Footpath AX29/41, then easterly for 30 metres to Hill Road Point D.
4. This claimed Bridleway/Byway open to all Traffic is illustrated as a bold black dashed line on the attached Location Plan EB/Mod 53/Sub as A-B-C-D (scale 1:3000).

Analysis of the Documentary Evidence

The claim is based on documentary evidence which is listed in chronological order. The route is illustrated on the Location Plan as A-B-C-D, the same numbering having been imposed on the following extracts for completeness.

Winscombe and Shipham Enclosure Award (1799) Somerset Record Office Ref: DD/PC/winsc/6/1/1

The map entitled “A Plan of the Commons or Waste Lands” illustrates Station Road as a route from Banwell to Churchill and the initial part of the road known as Hill Road as leading from Woodborough but does not illustrate the route the subject of this claim. There is illustrated what could be interpreted as the commencement of Roman Road, Point A but this is not detailed in the Enclosure Award. This document does not assist in establishing the existence or status of Roman Road. An extract of this plan is attached as **Document 1**.

British Library O S Map (1811)

This plan produced by Ordnance Survey covers an area of land from Wrington in the north to Wells in the south and is considered to be a detailed map of its time. Undertaken by surveyors looking from advantage points of height, the routes depicted upon this plan illustrate existence but do not assist with status. This map illustrates the claimed route A-B-C-D as a through route between Station Road and Hill Road similar to other routes depicted which are now known to be public highways. It should be noted that routes to farms and private access are also depicted. An extract of this plan is attached as **Document 2**.

Greenwood Map of Somerset (1822) North Somerset Council

The applicant has referred to this document in the application submitted. This map illustrates the claimed route A-B-C-D as a through route similar to other mapping and suggesting that it was capable of being used by the public with no indication of any barrier across the route, however, its depiction on the plan does not assist with establishing its status only that the route existed on the ground. Again, it should be noted that routes to farms and private accesses are also depicted. An extract of this plan is attached as **Document 3**.

Winscombe Tithe Map (1840) Somerset Record Office

The whole document covers the area of Winscombe and Sandford over which the claimed route A-B-C-D passes. The map illustrates the route as a through route, bounded on both sides excluded outside of those plots considered relevant for Tithe Tax. It is depicted in the same manner as other routes within the area which are now classified as adopted highways, or farm accesses. This route is not marked with an apportionment number therefore will not be detailed on the apportionment records. Whilst this provides evidence of its existence it does not provide evidence of status.

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

Finance Act (1910)

The Finance Act allowed for the levying of a tax on the increase in value of land. All holdings or hereditaments were surveyed and recorded with an individual number on the

Second Edition OS County Series Maps at 1:2500 scales. The Finance Act process was to ascertain tax liability not the status of highways. The documents are relevant where a deduction in value of land is claimed on the grounds of the existence of a highway. It should be noted that these plans are the working documents rather than the final versions which would normally be held at the Record Office at Kew. It has not been possible to obtain any other version.

The claimed route is illustrated on the map as a through route points A-B-C-D which is enclosed on either side excluded from the adjoining hereditaments 295, 523, 513, 382 and 170.. The route has been given an O.S parcel number of 398 with a measurement of 0.682 of an acre. It can also be seen that at Points A and C is the indication of a pecked line. The reason for this pecked line is unclear. This plan assists with illustrating that at this time a through route was considered to exist but does not assist with status.

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

Handover Map of Winscombe (1930) North Somerset Council

These Handover maps, which were drawn up in 1930 on an 1887 map base, illustrate the claimed route A-B-C-D. The purpose of these plans were 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 map shows the claimed route as a very faint yellow line beginning from the north at the Red coloured highway (Station Road) Point A, proceeding in a south easterly direction along Roman Road through to Point D. This would imply the route was considered as a minor highway. However, in comparison to other yellow routes on the map, the colouring is not the same, this could be the cause of the colour fading or that attempts have been made to erase the colouring. Nevertheless, the route is shown as a through route although the base mapping has faded in this area.

An extract of this map is located in **Document 6**.

Definitive Map of Winscombe (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.

The 1st stage was the Parish Survey which would have been undertaken by members of the Parish Council. They normally produced a Parish Survey Plan and Walking Card. In this instance there appear to be three cards referring to Footpath AX 29/78.

The first card refers to paths 41, 40 and 74 but is crossed out in pencil with 'see 78'. Type of path FP and CRF and describes the path starting at Lane opposite Sandford Farm, enter OS 402 (field gate) following left hand hedge to gate & PC Stile into lane near Washbrook Bungalow footpath 41 Methodist Church to Banwell.

The second card reads “FP The path starts at Station Road Sandford opp Sandford Farm, & runs south along lane to junction of FP 41 & thence east to the c. road opp Methodist Church. [see previous card for No 41].

It would appear from records held detailing objections which were made at the draft map stage that an objection was made by Axbridge RDC which reads “The south eastern end of 29/78 should run alongside old Roman Road instead of along it”. The clerk for Somerset County Council agreed with the objection made and determined “Amend south eastern end of 29/78”.

The third card reads amend south eastern end of 29/78.

Copies of these cards are attached to this report as **Document 7a, b and c**.

At this time it has not been possible to locate the Parish Survey Plan produced by the Parish Council.

The Draft Map illustrates Footpath AX29/78 commencing on Station Road and proceeding in a straight line to its junction with Footpath AX29/41 which then exits opposite the Methodist Church. An extract of this plan is attached as **Document 8a**.

The Draft Modification Plan illustrates the amendment suggested by Axbridge RDC. That amendment being that the footpath is in the field rather than on Roman Road. An extract of this plan is attached as **Document 8b**. Correspondence held on file dated March 1959 between Axbridge Rural District and Somerset County Council reads as follows:

“I received from Messrs Chesterman & Sons, Solicitors of 2 Belmont Bath, a copy of the letter you wrote to them on the 19th December 1958, with a request that my Council take the matter up with you. The correspondence was referred to the Winscombe Parish Council for its comments and it appears that the path referred to was an old Roman Road but although the Parish Council had never claimed there was any public right of way thereover, the path was shown as a public path on the draft map prepared under the above Act, instead of a path through an adjacent field which was claimed by the Parish Council. I have accordingly been instructed by my Council to inform you of the position and to ask for rectification of the draft map. No doubt you will, if necessary, communicate with the Clerk of the Winscombe Parish Council who is Mr F J Higgins of the Ferns, Lynch Road, Winscombe, Somerset”.

Other correspondence advises that Roman Road at its southern end is so overgrown the way is impassable and the route should be altered on the Draft Modification Map to conform to the Parish Council's latest claim. These letters are providing the evidence behind the change.

The Provisional Plan (which was made available to landowners for comment) illustrates the route of AX29/78 proceeding along Roman Road then continuing into the field on the right rather than continuing along Roman Road to its connection with Footpath AX29/41. An extract of this plan is attached as **Document 8c**.

The Axbridge Rural District Council Definitive Map for the area carries a relevant date of 26 November 1956. Footpath AX29/78 is illustrated similar to that shown on the Provisional Map. An extract of this plan is attached as **Document 8d**.

The above documents 7a, 7b, 7c and 7d illustrate that the recording of Footpath AX 29/78 and AX 29/41 was undertaken fully and that the objection submitted by Axbridge RDC was

taken on board as part of the due process. These documents only relate to the Definitive Map Process where at the time of production the recorder felt public footpath rights needed to be recorded. However, it should be noted that the base maps used in all of these stages illustrates Roman Road as a through route for its entire length with no indication of any barrier or obstruction.

North Somerset Council Records

The claimed route between points A and B known as Roman Road is recorded as an unadopted road on North Somerset Council's Highways Records. However a public footpath has been recorded over this section of the claimed route since 1956. The fact that this route is recorded as a public footpath does not preclude the possibility of higher rights having existed over the route however a case to change the status needs to be proven by evidence.

Photographs held on file dated July 1999 show the existence of the fence and stile at Point B, however correspondence held also implies that horseriders were using Roman Road. When the complainant asked riders to dismount and walk they declined such suggestion. It is not clear from this correspondence whether the horse use then continued via the public footpath or the continuation of Roman Road, and if it is Roman Road how they were bypassing the fence and stile.

A site visit was undertaken in February 2008 which showed that just south of Point B the fence and stile were still in existence and that between points B and C the ground had been cleared of vegetation. It is believed that this was undertaken by Thatcher's who own the field through which Footpath AX29/78 currently passes, this seems to have occurred around the time they created an orchard in the field. Unfortunately, it is not possible to ascertain exactly when this stile was installed.

Landownership

At this time, having consulted Land Registry, it has not been possible to establish who the owners of the land over which the claim route actually is, although Thatcher's Cider considered that the section B-C is land which they have acquired. According to the records held at Land Registry none of Roman Road is included in the ownership of any of the adjoining properties. It is not possible to provide a print of their records because of copyright restrictions. A plan is held on file for viewing only.

If it is resolved that a legal Order should be made in regard to this matter it will be necessary for dispensation to be sought from the Secretary of State due to lack of information on ownership.

Consultation and Landowner Responses

Consultation Responses

Pre Order Consultation letters were sent on the 5 September 2017 to neighbouring land owners, local user groups and utility companies.

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

Name	Objection or Supporter	Comment
Atkins Global	No Objection	We refer to the below or attached order and confirm that we have no objections.
Bristol Water	No Objection	Thank you for your email dated 5 th September 2017. We confirm that we have no objection to the proposed stopping up modification order at the above address. We enclose a copy of our ordnance survey sheet for your information.
Virgin Media	No Objection	Thank you for your enquiry regarding work at the above location. Virgin Media and Viatel plant should be affected by your proposed work and no strategic additions to our existing network are envisaged in the immediate future.
Cadent and National Grid	No Objection	Cadent and National Grid therefore have no objection to these proposed activities.
Openreach	No Objection	Thank you for the copy of your proposals and location map. Openreach does appear to have apparatus in the area of your proposals. Openreach will not object to these proposals, however, we will insist on maintaining our rights under the appropriate legislation. If our plant has to be resited then charges will be raised to recover these costs.
Mr & Mrs R Higgins	Objection	<p>As promised when we spoke on the telephone on 22 Sept a copy of my original letter in reply to a letter from your department on 17.2.2017.</p> <p>Thank you for your letter and information with regard to the above and repercussions on Roman Road Sandford dated 17/2/2017. Our feelings remain the same as written in my letter of 21 October 2015 relative to the diversion of the footpath shown on Map No PPO162. However the situation has changed with the added implication of the introduction, of the possibility of creating Roman Road as a Bridleway/BOAT. This we would strongly object to. Roman Road is an unadopted "road" created and maintained by the residents at substantial cost.</p>
Mr & Mrs N Rosario	Objection	<p>With reference to July 2004 Woodspring Bridleways Associations' request to alter the designation of the route to a Bridleway, we have absolutely no objection to this. However we absolutely object to the route being altered as shown between (Point A) and (Point B) as the black line marked, as this is right adjacent to our property. We do not think it's fair or right to alter the route for pedestrians, cyclists and horse riders to take a path this close to our property.</p> <p>We have absolutely no objections to altering the designation to Bridleway for the original footpath, route marked in red between (Point A) and (Point B) on the plan attached.</p>

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 this case no user evidence has been supplied to assist.

As detailed in Appendix 4 very limited evidence (one complainant) has been found to show that use by horses has been challenged. Similarly, this complaint is the only evidence found to show that horse use was being made. Both pieces of evidence relate to July 1999.

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 further evidence has been found to illustrate that adjacent landowners to this route have taken any action to stop vehicles or horse riders. All of the early documentary evidence has shown Roman Road as a through route with no physical barriers to use. However such use appears to have been obstructed by vegetation, often overgrown between 1950 and 2008 until the adjoining landowners cleared the land.

However, there appears to be no date of challenge for this application. Furthermore the historical evidence suggests that this is an ancient route depicted on mapping since 1811.

Summary of Evidence and Conclusion

Summary of Documentary Evidence

Most of the documentary evidence submitted within this report is held to be important legal documents of their respective time and the information recorded upon them to be legal and accurate.

Although Roman Road is not depicted on the 1799 Enclosure Award Plan this does not mean that the route did not exist on the ground only that it was not needed to identify a plot of land being exchanged, allotted or set out as part of that process.

The historical maps detailed within Appendix 3 and illustrated on the attached documents do not show this route labelled as Roman Road. It would appear from other mapping which has been looked at that the naming of Roman Road did not appear on O.S maps until the mid 1900's.

Taking all of the historical documentation looked at in Appendix 3 into consideration all of these plans except the Enclosure Plan illustrate the route A-B-C-D in existence as a through route, the earliest of which being 1811, however the fact that these are depicted does not confirm status.

All maps contained within this report since that date have illustrated the claimed route A-B-C-D as a through route capable of being used by the public. No physical barriers were depicted or dead ends illustrated.

Whilst this route may well have been a route capable of being used since 1811 evidence has shown that such use may have declined as the section B-D was reported to be overgrown with vegetation back in the 1950's. This does not however preclude the possibility that this route is an ancient highway of some status.

During the production of the Definitive Map in 1950 it has been shown through the documents labelled 7 and 8 that the use of the full length of this route A-B-C-D had changed placing the footpath entering the field presumably avoiding the overgrown vegetation. These surveys were carried out by members of the parish council on foot. This information does not preclude the possibility that higher rights than footpath had previously been established over the full length of the route A-B-C-D known as Roman Road.

Taking all of the documentary evidence into consideration sufficient evidence has been found to support the existence of the claimed route A-B-C-D. The fact that no physical barriers have been found illustrated on any of the plans included in this report, could lead to the presumption that it was reasonable to suggest that this route was capable of being used by any forms of transport including vehicular traffic. However, no user evidence has been submitted to support this.

In addition to the documentary evidence, when looking at this route on the ground it is not hard to visualise, especially with all of the vegetation cut back to the hedgerows that there is a non-metalled route which could have been used by most modes of transport of the time, namely pedestrian, horses and horse and carriage.

Today the section A-B is maintained by the residents of Roman Road and is a tarmac surface. The section B-C as previously stated is soil covered in vegetation, prone to be muddy and overgrown and C-D once again is tarmac. The existence of the fence lines at Points B and C could be regarded as the event which has challenged the use that had been enjoyed over the full length of this route. It has not been possible to confirm when these hedges were constructed, only that they pre-date 1999.

The claimed route A-B-C-D has been consistently illustrated in a similar manner to the roads that it connects with suggesting that this route was considered to be of a similar status. Obviously over time this route has continued to stay in its current condition whilst roads around it have improved in condition.

Therefore, the Officer feels that sufficient evidence has been considered to show that the route A-B-C-D should be of a higher status than footpath, the claim being that this route should be recorded as a Bridleway /Byway open to all Traffic.

Whilst the accepted legal maxim '*once a highway, always a highway*' will apply, sub-section 67(1) of the Natural Environment and Rural Communities Act 2006 provides that an existing public right of way for mechanically propelled vehicles is extinguished unless there is evidence to show that one of the possible criteria for exemption listed in sub-sections 67(2) and 67(3) is satisfied.

Applied now to this case, if the evidence shows that the route in question was historically a public right of way for vehicles, the public rights now in existence would be those associated with a Restricted Byway unless exemption from the extinguishing effects of the 2006 Act was shown to be applicable in which case Byway Open to All Traffic may be the appropriate status to be recorded on the Definitive Map.

No evidence has been submitted by the applicant to offer any comment on whether any of the exemptions listed in sub section 67(2) and 67(3) of the 2006 Act apply here.

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.

When considering this matter it should be noted that no user evidence has been submitted suggesting that the route A-B-C-D has been used by the public as a Bridleway or Byway Open to All Traffic. However, their depiction on historical plans illustrates that they were routes capable of being used as a through route.

In regard to the route A-B and C-D these are already public footpaths, therefore the higher test of "on the balance of probabilities" needs to be considered. These routes have appeared on plans since 1811 as bounded tracks. As far as the evidence viewed these routes do not seem to have been fenced or gated across until around 1999 (point B and point C). The existence of this fencing whilst challenging any use higher than pedestrian (due to the existence of a stile) does not preclude a route having higher status than that already recorded prior to the installation of the fencing.

Having regard for the legal tests that should be applied in respect of the route B-C “does a route subsist or is reasonably alleged to subsist”, the historical evidence shows that a route has been evident on the ground since 1811. Although no user evidence has been produced to support public rights having been established over them there is also no evidence to show that the route was not capable of being used.

As it would appear that the full extent of the route A-B-C-D was capable of being used by all means of transport of the time, namely pedestrian, horse and carriage, potentially even mechanically propelled vehicles it is therefore necessary to have regard for sub-section 67(1) of the Natural Environment and Rural Communities Act 2006 and the exemption specified within sections 67(2) – 67(3).

It is known that Roman Road provides vehicular access for the residents of this road and Thatcher’s Cider to gain access to their field. These are private rights of access, not public and will not be affected by the outcome of this determination.

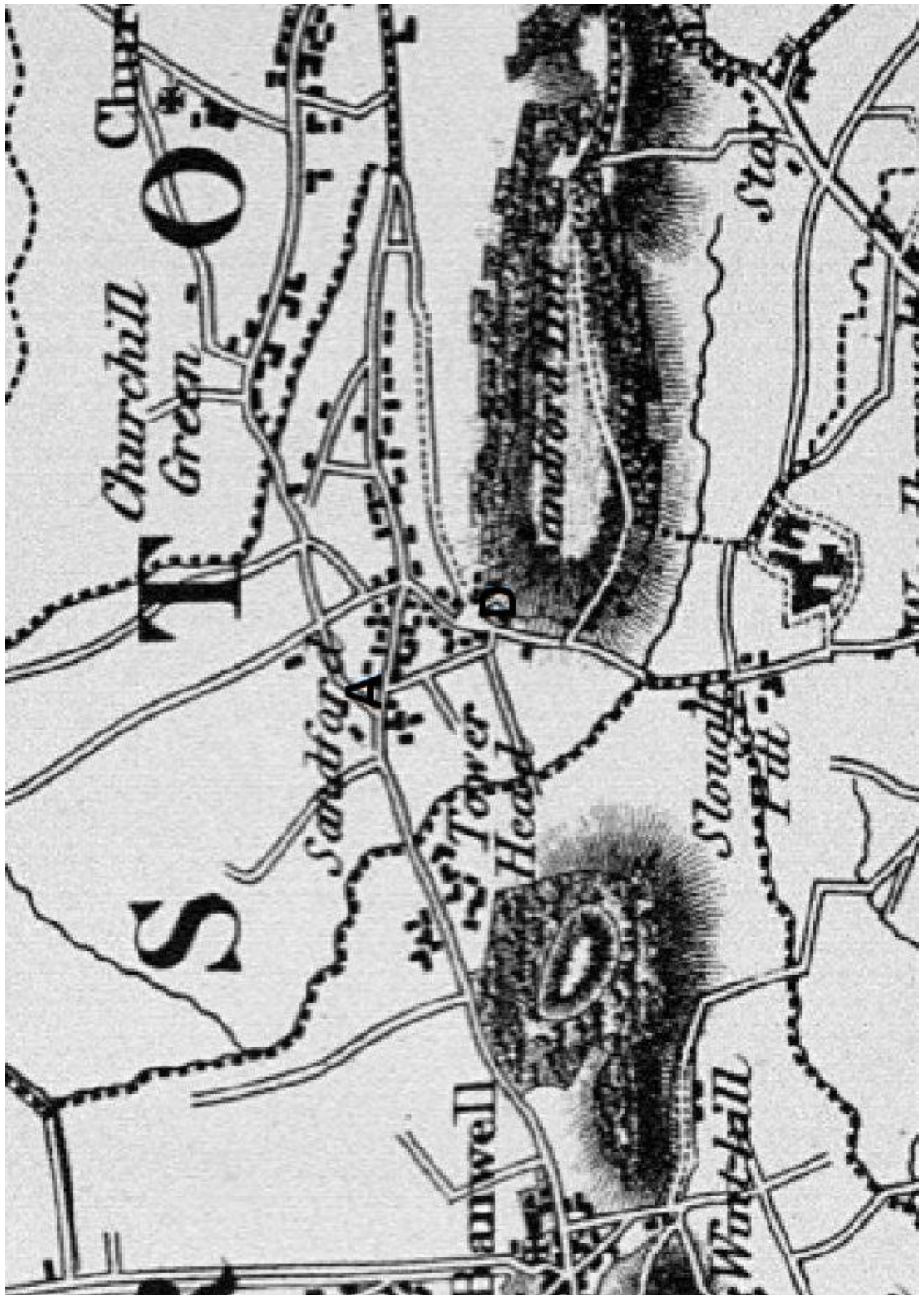
It is this officer’s opinion that any vehicular rights which may have existed over the route A-B-C-D have been extinguished by Section 67 of the Natural Environment and Rural Communities Act 2006 (no exemptions being suggested), therefore A-B-C-D should not be recorded as a Byway Open to All Traffic but should be recorded as a Restricted Byway.

The options that were considered are:

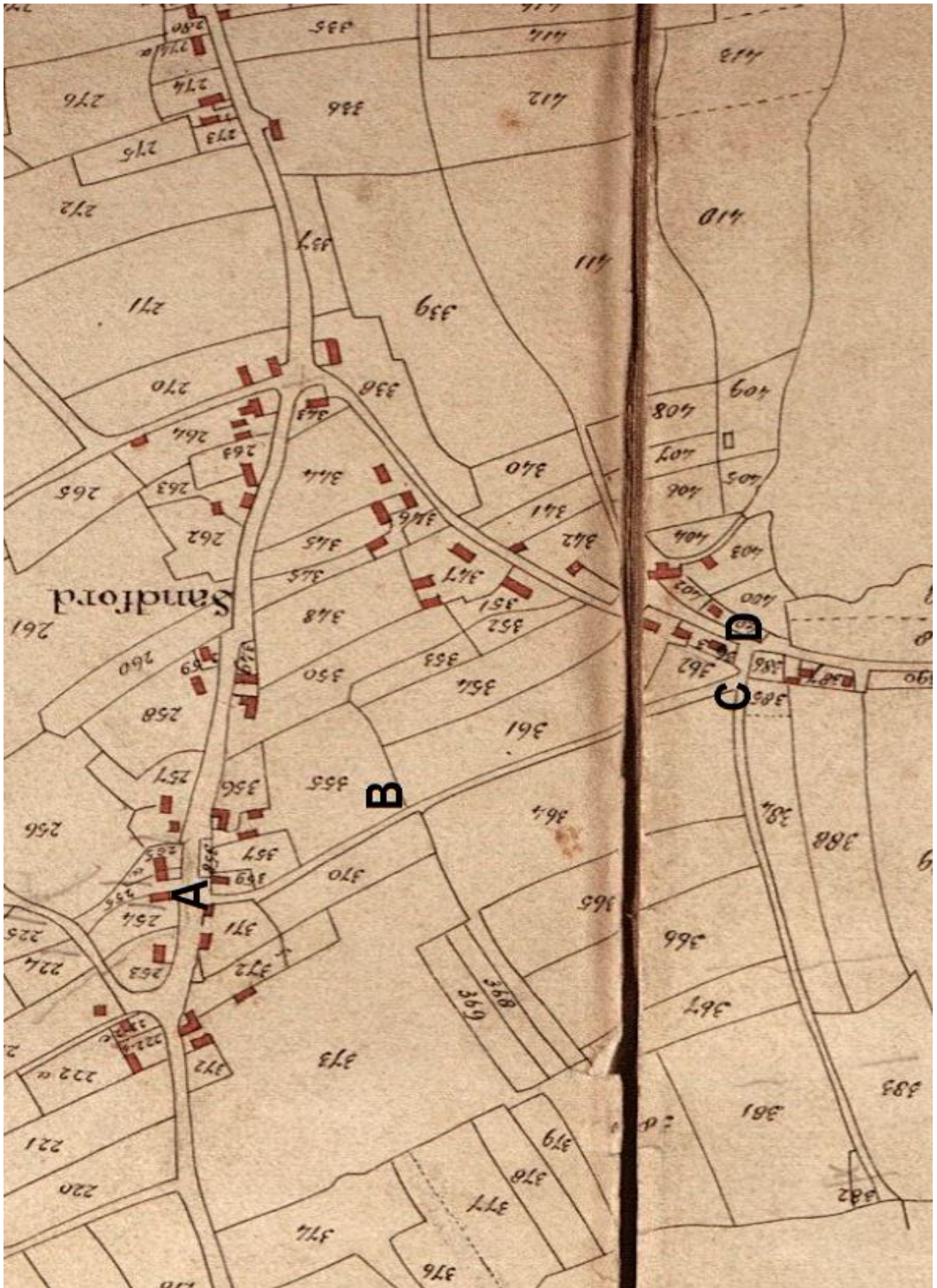
1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D as a Byway Open to all Traffic
2. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D as a Bridleway.
3. Whether having regard for the Natural Environment and Rural Communities Act 2006 that the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-D as a Restricted Byway
4. Whether any of the applications described in 1, 2 or 3 above should be denied as there is insufficient evidence to support the making of an Order.
5. If the Committee accepts the recommendation of the Officer that an Order should be made for A-B-C-D they are asked to authorise the confirmation of the Order if no representations or objections are received.
6. 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.

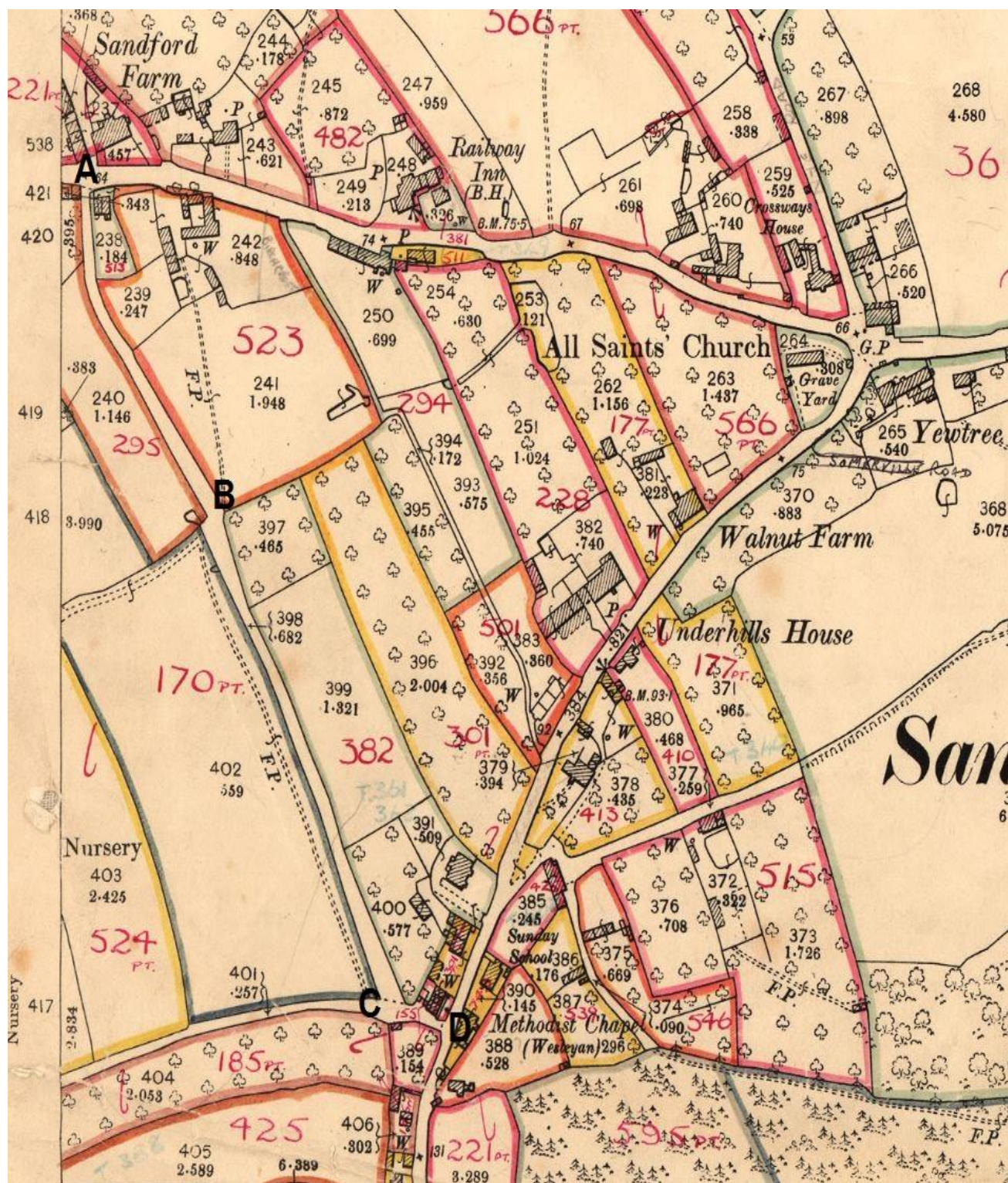
[illegible]

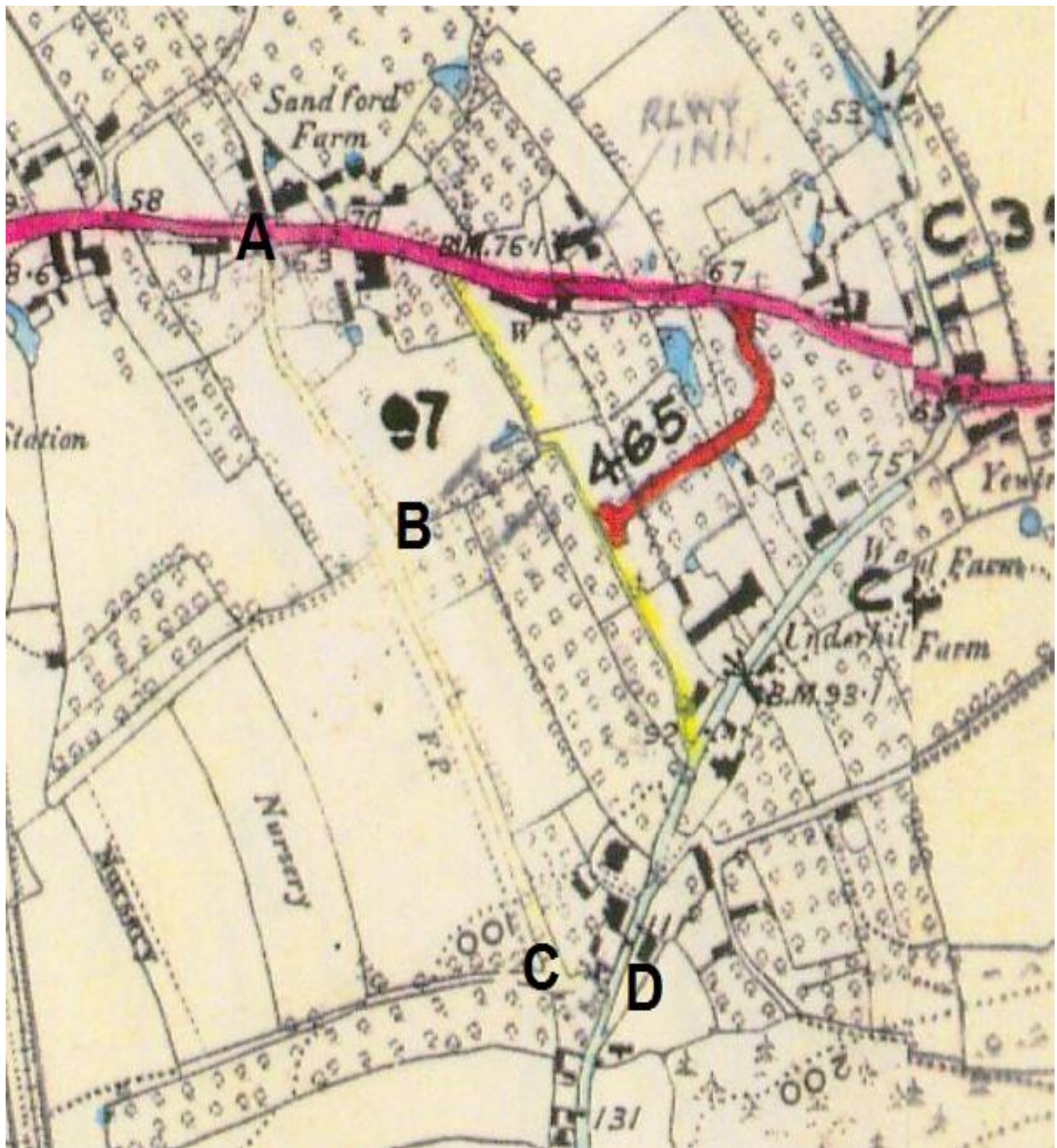




DOCUMENT 4
Winscombe Tithe Map 1840







SOMERSET COUNTY COUNCIL

BOROUGH/URBAN DISTRICT/PARISH OF: Wincobury
(Delete as necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No of Path: See 78
41, 49, 74. Path shown on 6" O.S. No.: XVIII.E. Kind of Path, i.e. F.P., Stk, C.R.F. or Stk:-

DESCRIPTION: The path starts at lane opposite Sandford farm. enters OS 402 (field gate)
following left hand hedge to gate Pt. into lane
near Washbrook Bungalows foot path No 41 Rethedale
Church to Bonwell.

W. 34002

P.T.O.

(Please continue on second card if necessary)

<p>Walking Survey made by:- <u>F.R. AUSTIN</u></p> <p>(Signed) <u>F.R. Austin.</u></p> <p>Date <u>26 Feb 1950</u></p>	<p>Agreed by (Borough/Urban Parish Council / Meeting)</p> <p>(Signed) <u>Alex M Brown</u></p> <p>Chairman/Clerk</p> <p>Date</p>	<p>Approved by Rural District Council:-</p> <p>(Signed) <u>Frank Keble</u></p> <p>Chairman/Clerk</p> <p>Date <u>26 MAY 1952</u></p>
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WINScombe

SOMERSET COUNTY COUNCIL BOROUGH/URBAN DISTRICT/PARISH OF :—
(Delete as necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :— 78 Path shown on 6" O.S. No. :— 17 NE Kind of Path, i.e. F.P., B.R., G.R.F. or B.R.F. :—

DESCRIPTION :— The path starts at Station road, Sandford, opp. Sandford Farm,
runs South along lane to junction of F.P. 41. It then
goes to the C. road opp. Methodist Church.

{ See previous card for No. 41 }

P.T.O.

(Please continue on second card if necessary)

Walking Survey made by :— (Signed) Date	Agreed by (Borough/Urban Parish Council / Meeting) (Signed) Date Chairman/Clerk	Approved by Rural District Council :— (Signed) Date Chairman/Clerk
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SOMERSET COUNTY COUNCIL

BOROUGH/URBAN DISTRICT/PARISH OF :— *Dunscombe*
(Delete as necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :— *78* Path shown on 6" O.S. No. :— *1702* Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :—

DESCRIPTION :— *The path starts at*
A road south eastern end of 29/78

B.38703 P.T.O.

(Please continue on second card if necessary)

Walking Survey made by :— (Signed) Date	Agreed by (Borough/Urban Parish Council / Meeting) (Signed) Date Chairman/Clerk	Approved by Rural District Council :— (Signed) Date Chairman/Clerk
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