

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB-COMMITTEE

DATE OF MEETING: 26 SEPTEMBER 2018

**SUBJECT OF REPORT: FOOTPATH AX29/76 SANDMEAD DRIVE,
CLAIMED BYWAY OPEN TO ALL TRAFFIC**

TOWN OR PARISH: WINSCOMBE & SANDFORD

**OFFICER/MEMBER PRESENTING: REPORT OF THE DIRECTOR OF
DEVELOPMENT & ENVIRONMENT**

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise the relevant officer to reject this application relating to Mod 56 on the grounds that there is insufficient evidence to support the making of an Order.

1. SUMMARY OF REPORT

This report considers an application which was made on the 27th July 2004. That application requested that a route, in the Parish of Winscombe, should be recorded as a Byway Open to all Traffic. This route is currently recorded on the Definitive Map as Footpath AX29/76. 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 referred to one document and all maps they have looked at as the evidence upon which they wish to rely, although no copies have been supplied. 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 56 as A-B.

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 56

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Analysis of Applicants Evidence

Appendix 4 – Analysis of Additional Documentary Evidence

Appendix 5 – Consultation and Landowners Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – Greenwood 1822

Document 2 – 1811 Surveyors Plan

Document 3 – O S Mapping 1884

Document 4 – O S Mapping 1898

Document 5 – O S Mapping 1904

Document 6 – O S Mapping 1931

Document 7 – O S Mapping 1959

Document 8 – Winscombe Parish Council Reclassification Document

Document 9 – Winscombe and Shipham Enclosure Award 1799 Extract

Document 10 – Winscombe Tithe Plan 1840 Extract

Document 11 – Finance Act 1910 Extract

Document 12 – Highways Handover Map 1930 Extract

Document 13a – Draft Map Extract

Document 13b – Walking Card Side 1 and 2

Document 14 – Draft Map Modification Extract

Document 15 – Provisional Map Extract

Document 16 – Definitive Map extract

Document 17a and b – Object Name Book

Document 18 – Winscombe Parish Council Letter

Document 18a to 18g – Mr Parnell's Documents

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

This report relates to the route A-B, which is currently recorded on the Definitive Map as Footpath AX29/76, it is necessary for the Committee to have regard the legal test:

1. Section 53 (3)(c)(ii) relating to the section recorded as Footpath AX29/76 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 the 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 affected landowners have been contacted. In addition to this Winscombe 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

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

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:

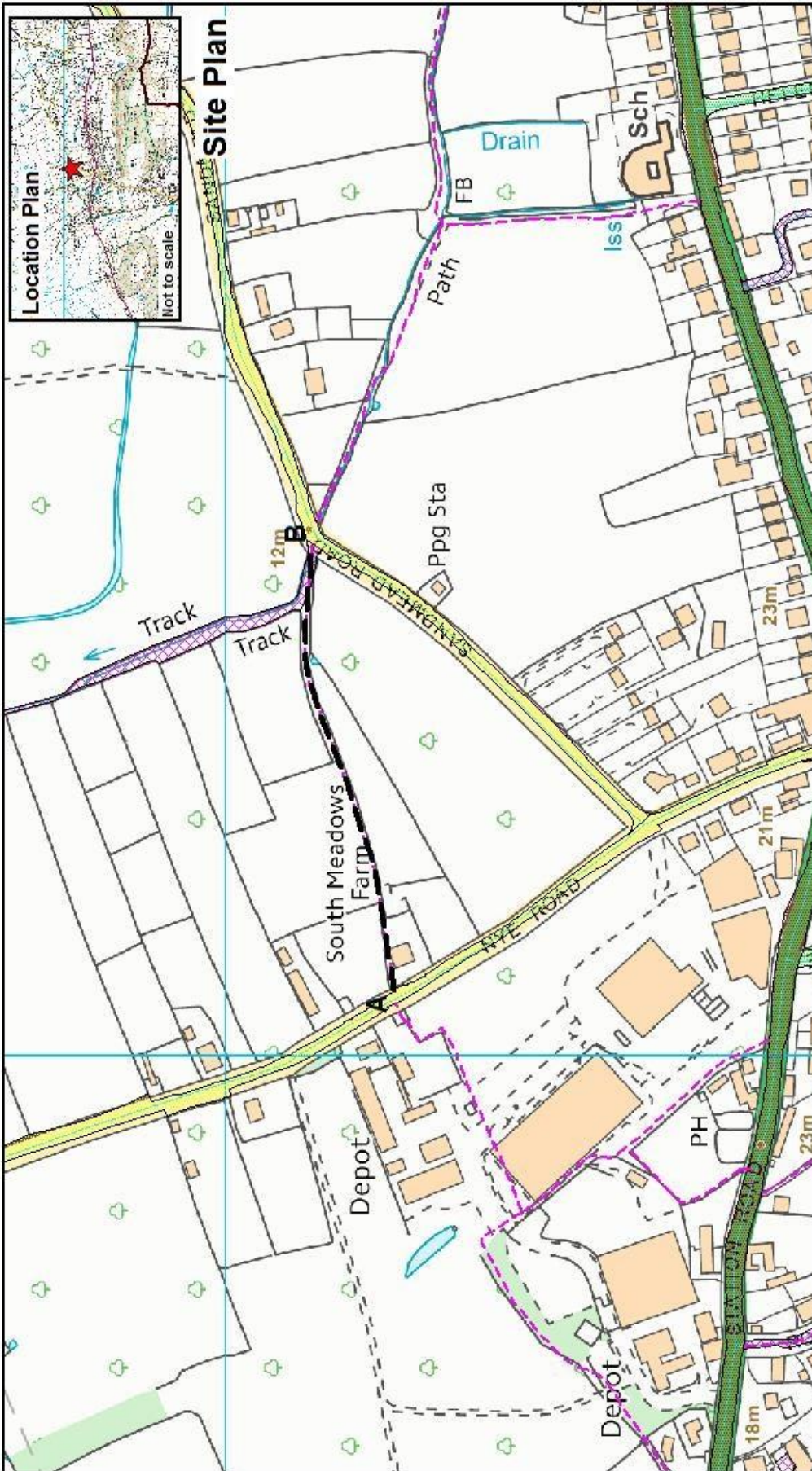
1. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade the route A-B Footpath AX29/76 to a Byway Open to All Traffic.
2. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade the route A-B Footpath AX29/76 to a Restricted Byway.
3. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade the route A-B Footpath AX29/76 to a Bridleway.
4. Whether the application to upgrade the route A-B Footpath AX29/76 to a Byway Open to All Traffic should be denied as there is insufficient evidence to support the making of an Order.

AUTHOR

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Telephone 01934 888802


BACKGROUND PAPERS

Public Rights of Way File Mod 56



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

Wildlife & Countryside Act 1981 - Sec 53 North Somerset District Council
Definitive Map Modification - Claimed Byway Open to all Traffic
Sandmead Drove Sandford



Map No. EB/Mod 56
 Scale 1:3500
 Grid Reference ST4259
 Date 3 May 2018
 Claimed BOAT A - B

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The Legal Basis for Deciding the Claim

1. The application has been made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and then keep the Definitive Map and Statement up to date, then making by Order such modifications to them as appear to be required because 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 –

- (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 Byway Open to all Traffic is that the requirement of Section 53(3)(c)(ii) has been fulfilled.

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

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

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

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

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

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

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

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 27th July 2004 from Woodspring Bridleways Association (“The Association”). The basis of this application is that a route currently recorded as Footpath AX 29/76 should be recorded as a Byway Open to all Traffic on the Definitive Map for the area. Submitted with the application was reference to one historical document which the applicant felt is relevant. Further documents have subsequently been submitted during the pre-order consultation process.

Listed below is the evidence that the Association referred to on their application:

1822 Greenwood Map of North Somerset

On every map I have looked at. Hedge has been removed in field to west shown as going on to railway line a more important road than Nye road

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

2. In addition to the above the applicant’s representative has submitted a number of other plans which they believe support their case that this route should be of a higher status than footpath. These plans are as follow:

1884 Somerset XVII.NE copyright National Library of Scotland

1898 Somerset XVII.NE copyright National Library of Scotland

1904 Somerset XVII.NE copyright National Library of Scotland

1931 Somerset XVII.NE copyright National Library of Scotland

1959 Somerset XVII.NE copyright National Library of Scotland.

The applicants have not provided any detailed written text to support these plans. However, for completeness extracts of these plans have been included within this report in **Appendix 3**

This matter is currently recorded on the Definitive Map Register as Mod 56.

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

2. The route being claimed commences at its junction with the adopted highway Nye Road, Point A and proceeds in an easterly direction for a distance of approximately 301 metres until it reaches another adopted highway known as Sandmead Road Point B.
3. This claimed Byway open to all Traffic is illustrated as a bold black dashed line on the attached Location plan EB/MOD56 (scale 1:3500).

Analysis of Applicants Evidence

The claim is based on documentary evidence suggested by the applicant. This route is illustrated on the Location Map as A-B, the same numbering has been imposed on the following extracts for completeness. (Scale 1:3500).

Greenwood Map of Somerset (1822) North Somerset Council

The applicant has referred to this document within the original application. This map relates to the area of land covered in Somerset. The map illustrates the route A-B as an enclosed route for its full length. However, although it is depicted on the map, it does not provide evidence of its status, only that a route of some character existed on the ground. That character could be a lane or farm track. It should be noted that cul de sac routes are also illustrated upon this plan. An extract of this map is attached as **Document 1**.

Additional Information provided by Appellants

A representative for the applicant has forwarded the following plans stating

“Sandmead Drove: I have attached the maps I have which show it the same as other routes in the area.

The claim is made on map evidence which shows Sandmead Drove as a through route from 1811 (The Surveyors Drawing) to 1959 which is nearly 150 years. It formed part of a network for roads in the Sandford Area and was open at both ends with no barriers except for the 1931 map which shows a line across the east end. The fact that it is shown on the 1811 map is an indication that it must have existed before that date”.

1811 Surveyors O S Map British Library

This plan illustrates all classes of routes in this area. At this time distinction was not made between routes that were public or private due to the distance from which these areas were surveyed.

An extract of this map is attached as **Document 2**

1884 Somerset XVII.NE copyright National Library of Scotland

As with the 1811 plan this plan illustrates all classes of routes and no distinction can be drawn as to the status. It does confirm that there was a route capable of being used however what that use was cannot be confirmed.

An extract of this map is attached as **Document 3**.

1898 Somerset XVII.NE copyright National Library of Scotland

This plan produced in 1898 has started to illustrate routes in a differing fashion. Some routes are drawn thinner than others suggesting that there was an opinion of differing status.

The claimed route seems to be illustrates in a similar style to that of Cul de Sac routes. In addition to this the practice of “shading” can be seen.

Information detailed within a publication entitled ‘Ordnance Survey Maps, a concise guide for historians’ by Richard Oliver published in 1993 provides information relating to the practice of shading.

This article advises that the classification of roads by administrative status was practised from 1884 onwards. It states that all metalled public roads for wheeled traffic kept in good repair by highways authorities [‘includes county, district and parish surveyors’] would in future be shaded’.

By 1896 roads were to be classed as first or second class according to whether they were Main or District roads, as classified by the surveyors to Rural District Councils; other roads were to be classed as second class if they were metalled and ‘kept in good repair’. ‘Good repair’ meant that it should be possible to drive carriages and light carts over them at a trot.

Both first and second-class roads were to be shown on the published maps in the same way, by shading one side. Third class metalled and unmetalled roads were to be shown without such shading. The abolition of shading in November 1912 effectively ended this system.

There would appear to be shading on the routes now known as Nye Road and Sandford Drove but not on the claimed route A – B.

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

1904 Somerset XVII.NE copyright National Library of Scotland

This plan illustrates the claimed route in a similar manner to that shown on the map above so the same comments would apply.

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

1931 Somerset XVII.NE copyright National Library of Scotland

This plan illustrates the claimed route in a similar manner to that shown on the map above other than the indication of a barrier between this track and the roadway at Point B. My previous comments relating to the earlier maps would also apply.

An extract of this map is attached as **Document 6**.

1959 Somerset XVII.NE copyright National Library of Scotland.

The illustration on this map seems to be concentrating on routes which can be used by the travelling public. Unfortunately, it is not possible to zoom into the copy of the whole document to ascertain whether any key is given to this marking. The claimed route is illustrated similar to the other maps discussed above.

An extract of this map is attached as **Document 7**.

In addition to the above one other document has been submitted by the applicant Mrs Craggs. No information has been given as to the purpose for the production of this document, however it is believed to relate to the reclassification of routes recorded as Carriage Roads used as Footpaths (CRF).

This document relates to the area of Sandford and Winscombe. Amongst other entries there is one which the applicant believes to be relevant. That is the one for Gypsie Lane. This document is implying that AX29/76 was recorded on the Definitive Map as a CRF (Carriage Road used as a Footpath). Its route is described as Station Road to Sandmead Lane. The proposed re-classification is that this is a FP. Under Reason for re-classification is written

“Some Landowners and Farmers have tried to stop children from riding ponies along these Drovers & Lanes”. This is signed for Winscombe Parish Council by the Clerk and dated 27.3.70. The applicants claim that this proves that this route was of higher status than that of a Footpath and therefore should be recorded as a Byway Open to all Traffic.

This document may indicate that attempts were being made by children to ride ponies along these routes however it also shows that landowners did not welcome such use. What this also shows that this route AX29/76 was regarded as only being used as a footpath otherwise the recorder would have reclassified it as a bridleway as is noted against AX29/77 Pye Corner. It should be noted that neither Gypsie Lane or Sandmead Lane are recoded on today's mapping, nor has their depiction appeared on earlier mapping discussed.

A copy of this document is attached as **Document 8**.

Analysis of Additional Documentary Evidence

The claim is based on documentary evidence only which is listed in chronological order below. This route is illustrated on the plan attached Location Plan EB/MOD56 for completeness showing the route A-B as a black dashed line.

Winscombe and Shipham Local Act (1797)

Before any Enclosure award could be produced or enacted a local act was written which laid down the role of the appointed Commissioners, the tasks they were to undertake and the Powers which were to be given to them in order to achieve the results of "Dividing, Allotting and Inclosing the several Commons and Waste Lands" lying within the parishes of Shipham and Winscombe in the County of Somerset.

Within this act there is a particular heading entitled **Commissioners to set out roads and appoint a Surveyor for first forming the same** which reads as follows:

And be it further enacted, That the said Commissioners, or any Two of them, shall, and they are hereby authorized and required to set out and appoint such public Carriage Roads in, over, and upon the said Commons and Waste Lands respectively, hereby intended to be divided and inclosed as they shall think necessary and proper, all which said public Roads shall be and remain of the Breadth of Forty Feet at the least (which Breadth of Forty Feet as to such public Carriage Roads so to be set out and appointed as aforesaid, and also as to any public Carriage Roads already made in, over, and through the said Commons and Waste Lands, or any Part thereof, is hereby declared to be sufficient, any Act or Law to the contrary notwithstanding) and shall be well and sufficiently fenced out on both Sides by the said Commissioners, or any Two of them, except in Cases where Fences are already made; and that it shall not be lawful for any Person or Persons to erect any Gate across any of the said public Roads, or to plant any Tree in or near the Hedges on the Sides of any of the said Roads, at a less Distance from each other than Fifty Yards; and after the said Roads shall have been set out as aforesaid, the said Commissioners, or any Two of them, shall, and they are hereby empowered and required, by Writing under their Hands, to appoint some proper Person to be Surveyor of the said Roads, and the said Commissioners, or any Two of them, shall, and they are hereby also empowered and required to set out and appoint, and cause to be made, erected, and completed such public Bridle Roads and Footways, and private Roads and Ways, and also such Banks, Ditches, Drains, Watercourses, Bridges, Tunnels, Stiles, and other Conveniences in, over, upon, and leading to and from such Commons and Waste Lands hereby intended to be divided and inclosed as they shall think requisite; and the same shall be made and erected, and at all Times hereafter repaired, cleansed, maintained and kept in Repair by such Persons, and in such Manner as the said Commissioners, or any Two of them, shall direct and appoint; and that after the several public and private Roads and Ways shall have been set out and made as hereinbefore mentioned, it shall not be lawful for any Person to use any other Roads or Ways, either public or private, over or upon the said Commons and Waste Lands; and that all former Roads and Ways which shall not have been set out and appointed as the Roads or Ways through, unto, or over the said Commons and Waste Lands, shall be deemed part of the said Commons and Waste Lands hereby intended to be divided and inclosed; and the said Commissioners, or any Two of them, are hereby empowered to stop up all such Roads and Paths as shall be deemed by them to be useless and unnecessary, and to remove any Gate or Gates from one Part of any old Inclosure, to any other convenient Part of the same Inclosure, for the Purpose of rendering the Roads and Ways more commodious.

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 lying and being in the Manor and Parish of Winscombe in the County of Somerset” illustrates plots of land which were being allocated to individuals either having purchased those parcels of land or awarded due to loss of use of land elsewhere. The section of route, (shown A – B on the attached plan) is illustrated but not described within the Enclosure Award.

The preamble of the Award describes the actions undertaken by the appointed Commissioners. Within that preamble it is written “**And** we the said commissioners after setting out and appointing the several roads or ways and foot ways (no public carriage or bridle roads being thought of us necessary) and other conveniences in over and upon and leading to and from the said commons or wastelands according to the purpose and directions of the said act have agreed upon such orders regulations and determinations respecting the same as appear to us necessary and proper conformable to the true intent and purport of the said act of parliament and as hereinafter are given expressed and contained”. This clearly states that these Commissioners did not consider any of the routes illustrated upon the Enclosure Award to be public roads.

What is illustrated are two plots of land which have been recorded within the Award 1a and 149.

*“One other piece or parcel of land other part of the said commons or wastelands in the parish of Winscombe aforesaid called Greenhill containing by admeasurement three roods and twenty seven perches and numbered **149** on the said Winscombe plan bounded on the north by the road – one other piece or parcel of land other part of the commons or wastelands in the said parish of Winscombe containing by admeasurement seven perches and numbered **1a** on the said Winscombe plan situate and being near the said last mentioned piece or parcel of land called Greenhill”*

*“The said piece or parcel of land numbered **149** on the said Winscombe plan also the said piece or parcel of land numbered **1a** on the same plan the said piece or parcel of land numbered **2** on the same plan the said piece or parcel of land numbered **3** on the same plan and the said piece or parcel of land numbered **4** on the same plan were sold to Job Marshman yeoman at and for the price or sum of fifty four pounds”*

In addition to the above Ney Drove is also coloured and named upon this plan given the number of 151.

*“One other piece or parcel of land other part of the said commons or wasteland in the said parish of Winscombe called Neys Drove containing by admeasurement three acres one rood and ten perches and numbered **151** on the said Winscombe plan bounded on the east and west sides by old Inclosures.”*

***The said** piece or parcel of land numbered **147** on the same plan was sold to John Knight Gentleman at the price or sum of fifty nine pounds – the said piece or parcel of land numbered **151** on the same plan was also sold to the said John Knight at and for the price or sum of fifty three pounds making together the sum of one hundred and twelve pounds*

This plan within Winscombe Parish, illustrates the route A-B as an enclosed bounded route with vegetation such as trees and hedges at either side of the route. At Point B there is the letter Y which forms part of the description for Greenhill Foot Path. The depiction of this route upon this map indicates that there was a track along this route that provided access

for the owners of the land adjoining to use. This route was not described within the Enclosure Award, nor were any public roads laid out, thereby casting doubt that this has ever been more than a route used by the public on foot.

It must be remembered that this Enclosure Award was only dealing with areas of Common Land, not the whole of the parishes which would explain why no public routes were included.

An extract of the map is attached as **Document 9**.

Winscombe Tithe Map (1843) Somerset Record Office

The Tithe Commutation Act was passed in 1836 under which all tithes were to be converted into a fixed money rent by an award made by the Commissioners appointed under the Act. It was an enormous task as it required all the land to be assessed for the value of its average produce and each field to be accurately measured and located for the permanent record.

The Winscombe Tithe Map represents the areas of Winscombe and Sandford, where the claimed route A – B is located. The map illustrates the claimed route in a similar way to other plans already looked at. However, such depiction does not clarify its status, the purpose of this document was not to identify status only land which was capable of producing a crop and thereby providing income from taxation.

The route A–B is depicted as a bounded route which would have been capable of providing access to the adjacent fields (the shaping of the route on this plan is different to other routes illustrated). . It should be noted that at this time the route now known as Nye Road was not a through route. North of point A can be seen a parcel number of 54. This parcel has a barrier depicted at Point A. This entry reads “Owned by Ann Culliford, occupied by Richard Criddle, Named The Drove Way, State of Cultivation Pasture”.

The illustration of this route on the Tithe Map suggests that this route may have been used as a through route, however its status cannot be verified.

An extract of this map is attached as **Document 10**.

Finance Act (1910) Somerset Record Office

The Finance Act allowed for the levying of a tax on the increase in value of land. All holdings or hereditaments were surveyed and recorded with an individual number on a special edition of the Second Edition OS County Series Maps at 1:2500 scales. The Finance Act process was to ascertain tax liability not the status of highways. The documents are relevant where a deduction in value of land is claimed on the grounds of the existence of a highway. It should be noted that these plans are the working documents rather than the final versions which would normally be held at the Record Office at Kew. It has not been possible to obtain any other version.

With reference to the claimed route of A-B, the map shows this route illustrated in a similar fashion to other maps previously viewed. The convention of illustrating routes which were considered to be highways (generally a parish road) with a thickened line on one side has been undertaken but not on the route A-B. These routes with the thickened line were

considered to be maintained by the authority of the time. This would suggest that whilst A – B was a route capable of being used as a through route it was not considered as a parish road. This route does not fall within any of the adjoining hereditaments it borders nor has it been given a hereditaments number of its own.

An extract of this map is attached as **Document 11**

Handover Map of Winscombe (1930) North Somerset Council

These Handover maps, which were drawn up in 1930 on an 1887 map base. The purpose of these documents 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.

The route A-B does not appear to be coloured in this fashion suggesting that this was not a route which was considered to be a highway. However it should be noted that other routes which are now known to be minor highways are also not coloured. There is a purple dashed line illustrated along the route A – B with LC 67609 written in pencil above. It is known that this is a Somerset Council Land Charges reference. Unfortunately, these records no longer exist so it is not possible to ascertain their content.

The base map for these records is the 1887 OS Map which contains a stamp at the bottom of the plan which states “Certified Non County Roads Shown Purple Broken Line”.

An extract of this Map is attached as **Document 12**

Definitive Map of Winscombe (1956) North Somerset Council

The definitive map process was carried out over many years going through various phases which involved the area being surveyed by local people (Parish Survey) 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 with a relevant date of 26 November 1956. Any objections about routes that were included or routes that had been omitted were considered by Somerset County Council and amended if considered relevant.

All of the maps looked at through these stages show Point A of the claimed route starting on Nye Road and following a route for its full length to Point B. This route is labelled AX29/76 and recorded as footpath. The route itself is illustrated to be an enclosed route aligned with trees allowing access to the adjoining fields and connecting to routes which are now recorded as adopted highways. Such depiction does not assist with the status of this route, only showing a route which may have been capable of being used by the public.

Unfortunately North Somerset Council does not hold a copy of the Parish Survey plan which would have been used for this area.

The Draft Map illustrates the route of AX29/76 on the same alignment as that of the claimed route A-B. The walking card for AX29/76 reads “The path starts at County Rd by Station & runs NE along the lane to Drove Way County Road which it crosses & then continues to

Greenhill Road at FP45. This is written in pencil and gives no indication to a status, nor has the card been signed or dated.

A copy of this map and walking card are attached as **Document 13a and 13b**

The draft map was placed on deposit within the Parish, normally within the Church so that persons could comment on the routes which had been detailed by the Parish Council. Any suggested changes which were considered by Somerset Council were then illustrated on the Draft Map Modification Plan. As can be seen on this plan, no proposed amendments were suggested. This base map illustrates a line across the end of the route at Point B. This plan also illustrates the thickened line on one side of routes which as I understand was a depiction that these routes were considered to be the Parish Roads. The route A-B is not illustrated in this way.

A copy of this map is attached as **Document 14.**

The Provisional Map was again placed on deposit within the Parish, this time so that Landowners could comment on the routes which had been recorded by Somerset County Council. If objections were received, these were either maintained or removed from the map. As can be seen on this plan, no amendments were made suggesting that all concerned accept this route as being a Footpath. Once again the base map illustrates a line across the end of the route at Point B. This plan also illustrates the thickened line on one side of routes which as previously stated I understand was a depiction that these routes were considered to be the Parish Roads. The route A-B is not illustrated in this way.

A copy of this map is attached as **Document 15.**

Following this process the Definitive Map which carries a relevant date of 26 November 1956 was published around 1965. This is our legal record of public rights of way and shows AX29/76 as a Footpath. Once again the base map illustrates a line across the end of the route at Point B. This plan also illustrates the thickened line on one side of routes which as previously stated I understand was a depiction that these routes were considered to be the Parish Roads. The route A-B is not illustrated in this way.

A copy of this map is attached as **Document 16.**

Additional Documents

Object Names Book

The Object Name Book drawn up to support the 1904 O S Mapping provides evidence that these entries were recorded in April 1902 by D McCarthy of the Royal Engineers. Amendments and additions were recorded in red, by E Pickwell also of the Royal Engineers. An entry entitled Sandmead Drove which is recorded on the maps dated 1884 and 1904 relates to a route coming off the claimed route and heading in a northerly direction. This title is never illustrated adjacent to the claimed route.

The Object Name Book entry for Sandmead Drove reads "Applies to a grass lane extending NW from its junction with Ph Rd about ¼ of a mile NE of All Saints Church to GWR". This description matches the route labelled on these plans, which would only be the initial section near point B, not the claimed route A – B. There is no entry for Nye Road.

The mapping shows the route which is now known as Nye Road depicted as Drove Way. An entry in the Object Name Book reads “Applies to a (portion of – crossed out in red) parish road extending from (Drove Way Bridge to junc of roads 8 chains NE of Sandford Farm – crossed out in red) Sandford to Nye – written in red”. Modern mapping names Nye Road from the main road in Sandford to the bridge over the former railway line (Drove Way Bridge) from there the route is called Drove Way. This amended description would seem to indicate that it was around this time that this road became a through route.

Extracts of these documents are attached as Document 17a and 17b

Correspondence held by North Somerset Council

A letter dated 26 June 1989 from Winscombe Parish Council confirms that Drove House was built in 1953 /54 for Mr G Hancock, prior to this there was a lane between fields 214 and 215. This lane was hedged on both sides. The hedge bordering 214 was removed soon after the house was built and at a later date the hedge to the north bordering 215 was removed from the end of 214 to 217 where a gate was erected across the lane. After the hedge bordering 214 (nearest to the house) was removed people walked up the driveway of Drove House to the eastern end of 214 where there was a stile into 215.

When the property was sold to Mr N Westlake he encouraged people to walk through the field gate alongside the hedge where Avon County Council erected a footpath sign. Some users continued to walk along the drive of Drove House, others used the field. A copy of this letter is attached as **Document 18**.

In addition to this other letters of complaint are recorded relating to the obstruction of this footpath and the blocking of the gate. All of these letters relate to the inability to use this route on foot.

Correspondence dated 5 January 1990 (1991) from the then owner Mr Parnell of Drove House responds to investigation that has been undertaken by Avon County Council regarding the obstructions on this footpath. Mr Parnell has provided a copy of a Statutory Declaration from a former owner of this land Mr Cecil Hancock signed and dated 1981 which provides clarity on when the land was purchase and background information relating to the former Drove. From this document it can be seen that the route described as a Drove ceased to exist physically in 1960. A copy of this correspondence is attached as **Document 18a to 18g**.

The information contained within the Statutory Declaration clarifies that Mr Hancock incorporated the Drove, by adverse possession, into his landownership. There is no record that any objection was made regarding this action. However subsequent events relating to the development of Drove House and the sale of the adjoining land 215 caused complaints to be submitted relating to the obstruction of the footpath for users. No correspondence has been found or submitted indicating that horse riders complained about the loss or obstruction of a route that they had been using. This does suggest that this route was only being used on foot.

Consultation and Landowner Responses

Consultation Responses

Pre Order Consultation letters were sent on the 14 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	Comments
Wales & West Utilities	No Objection	No apparatus seems to be affected according to plan supplied.
Cadent and National Grid	No Objection	An assessment has been carried out. Cadent and National Grid therefore have no objection to these proposed activities.
Atkins Global	No Objection	We refer to the below or attached order and confirm that we have no objections
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.
Bristol Water	No Objection	We wish to inform you that part of your proposed footpath from A to B, will be in our easement strip which extends 2 metres either side of the pipeline and within which any proposed construction works would be strictly regulated. We confirm that we have no objection to the proposed stopping up of footpath A to B so long as the above requirements are adhered to.
Environment Agency	No Objection	With reference to your Modification Order regarding Sandmead Drove, Sandford, having checked the Environment Agency's Property Register I can find no record of any land owned by the Agency or any agreements affecting the area. Please take this email as confirmation that the Environment Agency has no objection to the proposed Order.
Ms C Newth	Objection	Further to your letter of 14 th September 17, and our subsequent telephone conversation, we write to object to the above application. In order for the route shown on the plan to be recorded as a 'Byway Open to all Traffic' it would need to be accessible as such, which currently it is not. Is the proposal to widen the path to make it accessible? If so, the footpath that currently runs from Sandmead Rd to Nye Road, i.e. from points A to B on the plan, runs between ourselves (Drove House) and our neighbours at South Meadows Farm. It is fenced on our side, and on the South Meadows Farm side is bordered by mature trees. These trees offer screening between our two properties, which I believe was a stipulation of their planning permission when a

dwelling was built on their plot. If the path is to be widened then these trees would have to be removed, can you confirm that they would be replaced with mature trees, and if so what height these would be? This seems impractical and costly.

The current footpath has a low wall at the Nye Rd end adjacent to our driveway to prevent people / dogs from stepping into the road accidentally. If the Drove was to be accessible by horses and vehicles obviously there would not be a barrier. The traffic along Nye Road travels extremely fast and in our opinion the risk of a collision between a vehicle and a dog or horse would be significant. In summary we are slightly baffled by this application, the path is due to be moved and its new location will be greatly more accessible. It appear that the cost and safety risks offer no obvious benefit.

Winscombe Parish
Council

Objection

Members considered this request for modification from a footpath to a Byway Open to All Traffic submitted by the Woodspring Bridleways Association to NSC in 2004 claiming that this was a historical route. This statement was disputed as it was claimed that the route was impassable in the year 2000 and that there would not be sufficient width for horse riders and mechanically propelled vehicles, with the path being 1m wide near point B on the plan (Nye Road). It was thought that the path was an ancient route for driving animals around the parish only. The Parish Council OBJECTS to the modification order to convert footpath AX29/76 to a Byway Open to All Traffic.

Ms S Partridge

Objection

My family has owned this land for 40 years, this foot path has only been used for walkers. Drove House was previously owned by my parents the right of ways come though Drove House drive way and then joins the land which I now own for the last 30 years. I object to the opening of the right of ways. My reasoning being:

1) Horse Riders would not benefit as both exits come out on to the very dangerous road Nye Road. Exit B is at the top of a small hill, this road is a very busy road used by Thatcher's and it's a cut through road from Hewish to Sandford. Sandmead Road, Exit A is right on a very dangerous blind bend. This is also a very busy road as it used by a secondary school and is used as a cut through from Winscombe to Congresbury. I am a horse rider and I don't not ride on any of these roads anymore as it is too dangerous. If that right of ways is opened it means to an end as it does not go anywhere if it was beneficial to horse riders and keep them safe it would be a different matter but it is not. **2)** Cyclist and mechanically propelled vehicles vert rarely used the Sand Mead Road and the same on Nye Road as they use the Strawberry Line. **3)** Pedestrians (walkers) are seen to be walking up the footpath on occasions. **4)** What about the badger nests they are a protect animal. **5)** What about bats as they have been seen around both of the rights of way this is what we call the gully. **6)** What about the trees, 15 in total we have had to put in as a screen asked by the local planners. **7)** Gate way would have to be moved. Also moving the telephone poles that supplies electricity to the surrounding houses. **8)** Mr Thatcher has already applied to move the foot path along the bottom of the track and into his fields, this then brings walkers / cyclists opposite the Strawberry Line so they have not to go along that Nye Road. **9)** In the MOD

56 Sand Mead Road, on the map it looks very much like the path goes up Drove Houses drive under the garage that has been built, into their garden and under there block of stables then adjoins my land. So it looks very much like the garage and the stable block have been built on the old historical route dating back to 1799.

Green Lanes
Protection Group

Objections

I object to the proposed modification because any pre-existing public vehicular rights have been extinguished under two statutory provisions. My reasons are: **Facts** – The application form said “ I/We attach copies of the following documentary evidence In support of this application” There was no list as such. An attachment said “Old Drove Documentary shown on Greenwood 1822. On every map I have looked at Hedge has been removed in field to west, shown as going on to railway line a more important road than Nye Road. Apart from a map, no copy documents were attached **The Law** – NERCA 2006 Section 67 and Schedule 14 WLCA 1981 and WLC Regs 1993 SI 1993 No 12. 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** – (i) One of the central purposes of the application provisions is to assemble the evidence so that it can be inspected by all interested parties prior to making submissions. For that reason, the application must stand alone. There was no copy of Greenwood 1822, contrary to Sch 14, para 1(b). (ii) The application was not made in the ‘prescribed form’ insofar as there was no List of documents.

Identification of a solitary map without attaching a copy cannot be said to be providing a list documentary evidence attached in support of the application. For both reason, the application does not therefore qualify for exemption from extinguishment under NERCA s63(3). **Construction of legal requirement** – If any question arises as to the meaning ‘a form substantially to the like effect’, we refer NSC to paras 10 and 12 of the Joint Opinion by George Laurence QC and Ross Crail supplied to NSC. The wording is set out in the Appx to this letter. **Attached as Document 19. Interpretation of evidence** – It is not possible to comment on evidence if it is not attached to the application.

Mrs D Mallinson

Comments

I would like to make the following comments on this application, in response to your letter of 15 September. **1.** The applicant, Woodspring Bridleways Association (WBA), listed the following items of documentary evidence in support of their application:

“Greenwood 1822 On every map I have looked at”. However they did not provide Greenwood’s 1822 map or any other maps (other than their application map) with their application, despite saying on their application form that copies of documentary evidence were enclosed. 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.** I also question whether Greenwood’s map supports WBA’s application for public vehicular rights over this route. My reading of Greenwood’s map of 1822 (as copied in your report on Mod 51 to the Public Rights of Way Subcommittee on 26 July 2017) is that, although it shows the route applied for, it also shows other routes which are now public footpaths or which are not highways of any sort. For example, Greenwood shows a cul-de-sac route running north from the eastern end of the route applied for, which is now a shorter cul-desac and not on the definitive map or the list of streets.

Greenwood also shows the routes which are now public footpaths AX29/45/50, AX29/47/10 and AX29/71/20 in the same way as the route applied for. These examples suggest that Greenwood's map shows the physical existence of these routes in 1822 but does not indicate whether they had public vehicular rights or not.

Natural Environment
Officer – Ecology

I have screened the site using the GIS environmental data and 2014 aerial imagery. There are no designated sites along the route. There is an old record for otter to the east close to the Old Bridge River. Otter use pockets of woodland and scrub for lying up. Therefore, if areas of scrub are to be removed to open up the route, some further ecological assessment could be required. There are also greater and lesser horseshoe bat roosts to the south. As bats commute and forage along hedgerows, particularly tall thick hedges, the proposals should seek to retain the hedgerows (preferably as tall and thick) along the route as bat commuting and foraging habitats. Assuming no hedgerows are proposed to be removed, no objection.

Mr M Thatcher Objection

I have lived in Sandford for 49 years. During these 49 years I have never seen horses or indeed horse and carriages use this pathway. Either end of the proposed BOAT is not easily accessible to horses or indeed carriages, therefore it is not a suitable path for them. Especially as there are styles in place which have been there for many years. The path is in poor condition and not an easy walk. The path also runs under the garage at Drove House. This garage I believe has been in place for over 40 years. The footpath runs from A to B, neither end of the path has roads suitable to horses. They are both narrow roads with fast moving traffic. There are no bridleways close by so no natural exit from either road. The path at the bottom regularly floods and therefore it is impractical. I wish to lodge my objection to this application.

Ms S Partridge Objection (2)

I would like to strongly object to the modifications that are being proposed. This path is in poor condition and not easy to walk along let alone ride horses. It is unsuitable for horses for many reasons one especially is the styles that are in place either end of the path and the stone pathway at one end. The original pathway runs under the garage at Drove House, this garage was built approximately 40 years ago. Having lived here for many years, I have not seen any horses use this pathway. But what I have seen are the badger sets along the path, and the many bats that are flying in this area, both of which are protected and I am sure that by changing the path would disturb their habitat.

Mr J Thatcher Objection

I would like to lodge my objection to the above for the following reasons: having lived in Sandford for 74 years, I have seen many changes. One thing I have not seen is horses and/or carriages being used along Sandmead drove. There have been obstruction along this drove for as long as I can remember. First heaps of rubbish and soil then a garage built across it which was built 50 years ago and finally a style for pedestrians only was erected by the council. For the reasons above this drove is a footpath only and should remain so.

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.

Similarly for a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. There is no user evidence to show that this route has been used by the public at any time other than a public footpath.

As the applicant is relying upon historical documentation to support this application it is not possible to establish a date of challenge. If a date of challenge is required then this will have to be the submission of this application dated 27th July 2004.

Summary of Evidence and Conclusion

Summary of Documentary Evidence

Taking firstly the evidence submitted by the applicants representative it is acknowledged that the claimed route A – B is depicted upon these plans as a through route, however that does not clarify the extent of use that would have been made of it and by whom either public or private.

Starting first with the earliest of this batch the Surveyors Plan of 1811, Doc 2, this shows all types of routes whether that is parish roads, accesses to properties or tracks leading only to fields. This document being one of the earliest maps drawn for O S Mapping purposes would not have known the status of these routes only that they could be seen from the drawing location. What can be seen is that Nye Road as now known is not a through route, there is a barrier illustrated at point A suggesting that these may have been routes for landowners to gain access to their fields.

Greenwoods Map 1822, Doc 1, again depicts everything that could be seen from the drawing location (which would have been at height) regardless of its status. This only proves that a route of some form was visible but does not assist with status. As regards Nye Road this is shown as a through route continuing North Westerly from point A. This may be a point of challenge as to the reliability of this map when claiming this route as a Byway Open to All Traffic.

National Library of Scotland OS Maps between 1884 and 1959 illustrate the claimed route A – B Doc 3 to Doc 7 in differing styles. Whilst the earliest of these maps shows the route depicted the same as others now known to be public highway, later maps show the route similar to others that lead only to farms and cul de sacs.

It should be noted that around 1898 OS mapping started a practice of drawing a “thickened line” on their One Inch maps indicating that it was maintained by the Local Authority and considered to be a Parish Road suitable for wheeled vehicles. This depiction tended to be shown on the eastern side of routes. Such depiction is not shown on the claimed route A-B, thereby casting doubt that this route was a public vehicular route. This would be in keeping with its current classification of a Footpath.

This practice seems to have continued until around 1935, maps since that date have not been illustrated in that way, the practice of colouring routes seems to have overtaken this previous practice.

The depiction of the route A – B on the 1898 is illustrated as a thinner route drawing a distinction between the claimed route and those with a “thickened line” suggesting that the route was of a lesser status than that of other routes.

Another thing to note is that the maps dated 1884 and 1904 illustrate a route coming off the claimed route and heading in a northerly direction as Sandmead Drove. This title is never illustrated adjacent to the claimed route. As detailed in Appendix 4 this description does not relate to the route that is being claimed.

All of these maps illustrate the route A-B as an enclosed track for its full length, bounded on both sides. Although it is depicted on these plans, it does not provide evidence of its status, only that some form of through route existed on the ground.

The instructions contained within the Winscombe and Sandford Local Act are quite specific in regard to the powers being given to the Commissioners both in regard to Public Roads and recording of footpaths, bridleways etc. Attention needs to be drawn to the following wording: *“it shall not be lawful for any Person to use any other Roads or Ways, either public or private, over or upon the said Commons and Waste Lands; and that all former Roads and Ways which shall not have been set out and appointed as the Roads or Ways through, unto, or over the said Commons and Waste Lands, shall be deemed part of the said Commons and Waste Lands hereby intended to be divided and inclosed; and the said Commissioners, or any Two of them, are hereby empowered to stop up all such Roads and Paths as shall be deemed by them to be useless and unnecessary, and to remove any Gate or Gates from one Part of any old Inclosure, to any other convenient Part of the same Inclosure, for the Purpose of rendering the Roads and Ways more commodious”*.

The preamble taken from the Enclosure Award is quite clear that the Commissioners did not consider any routes on the Commons or Waste lands to be either Public Roads or Bridle paths. This document does not assist in proving the claim which has been submitted.

The Tithe plan in 1843 illustrates the route between Points A and B which could suggest that it was capable of being used but this does not assist this application in regard to the status to be placed upon it.

The Finance Act Plan once again illustrates the depiction of a thickened line on one side of some routes however not on the claimed route A – B. Whilst this illustrates a through route it does not assist in establishing a status.

The Highways Handover Map illustrates a purple dashed line along the route claimed between A – B. The full sheet of this map contains a statement at the base of this map which reads “Certified Non-County Roads shown Purple Broken Line”. This is a clear indication that this route was not considered a road. The purpose of this map was to record routes which were maintainable at public expense that were being handed over from Somerset County Council to Avon County Council.

The Definitive Map Process from draft stage through to Definitive Map seems to have progressed unchallenged. Unfortunately the walking card does not state a status nor is it signed. The Definitive Map shows this route as Footpath AX29/76.

The Object Names Book does not include any reference to the claimed route, therefore provides no assistance in determining whether the status of Footpath AX 29/76 should be changed.

The document submitted by Mrs Craggs relating to the reclassification process undertaken by Winscombe Parish Council, although suggesting that children on ponies had attempted to use the routes included on the list, also shows that landowners took action to stop such use, thereby showing an intention not to dedicate the route with such use.

The documents provided by Mr Parnell give a clear illustration to the history of this route when Drove House was developed. This confirms that the old route ceased to exist around 1960 and that no objection was made to these actions by vehicle drivers or horse riders.

The complaints received were from the walking public. This information certainly suggests that this route was not being used at this time in line with the claim now being made.

The documents submitted by Winscombe Parish Council and Mr Parnell have provided evidence which supports the recording of this route through the Definitive Map Process as a Footpath, nothing submitted would suggest any other use.

Whilst a route capable of being used has been illustrated on mapping since 1811 none of these documents have supported a status apart from the Definitive Map where footpath was recorded. Opportunities which could have established status was the Enclosure Process, the Tithe Process or the 1930's Handover Map. Whilst the applicants will argue that this is a route which was capable of being used, no evidence has been produced or found which would support the claim that Footpath AX29/76 should be recorded as a Byway Open to all Traffic.

There is no evidence that this route was ever considered a carriageway either public or private. The Enclosure Award lays out the actions of the Commissioners in regard to this area in that they did not consider any Public Highways necessary, thereby suggesting that any that were in existence were not considered to carry any public rights higher than on foot.

Taking all of the documentary evidence into consideration although sufficient evidence has been found to support the existence of a route, nothing has been found to support changing its status from Footpath to Byway Open to all Traffic.

I do not believe a case has been provided which proves that this route has been used as a public route other than on foot. Therefore, based on the documentary evidence, the Officer does not feel that the evidence supports the claim that this route should be a Byway Open to all Traffic. As no evidence has been found to suggest that vehicular use has been made of this route I have not had need to have any regard for the Natural Environment and Rural Communities Act 2006 (NERC).

Summary of Landowner Evidence

Based upon the submissions received by North Somerset Council detailed in Appendix 5 affected and adjacent landowners have provided evidence, some long standing, that the route A-B has not been used by any other users than those on foot. The information relating to historical recollection is relevant and has been taken into consideration when making my determination.

Comments within the objections also relates to the suitability and desirability of the claim which if successful would change Footpath AX29/76 from a narrow footpath heading into a field back to a wider track that was once depicted. These are concerns that cannot be taken into consideration.

Therefore, based upon the evidence from the landowners and witnesses there is no evidence to support the proposal to change Footpath AX29/76 to a Byway open to All traffic.

Conclusion

This application affects a route 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. In regard to the route A - B as this is already a public footpath the higher test of “on the balance of probabilities” needs to be considered.

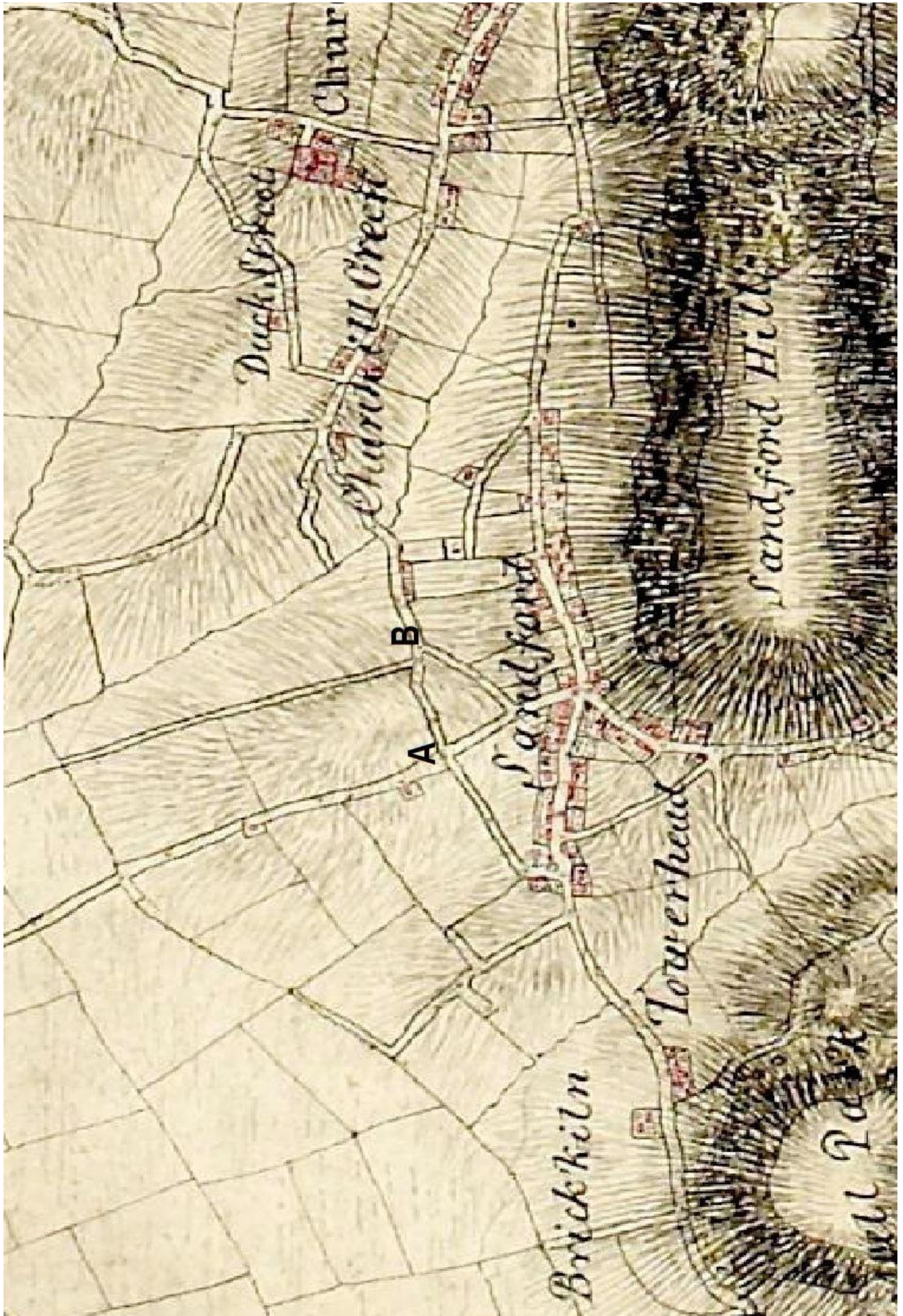
Although this route has been depicted on historical maps since 1811 most of those maps were not dealing with the status of the route. Over time the depiction of this route has changed. The applicant will claim that whilst one piece of evidence may not support a change in status, that the totality of all the evidence considered together would support their claim that this route should be recorded as a Byway Open to All Traffic. However, none of these documents have assisted with status.

Furthermore, no user evidence has been produced by the applicant to support their claim that this route should be recorded as a Byway Open to All Traffic.

It is felt by the officer that the documentary evidence does not support the claim that the route A-B Footpath AX29/76 should be recorded as a Byway open to all Traffic, therefore the application requesting a Definitive Map Modification Order to be made should be denied.



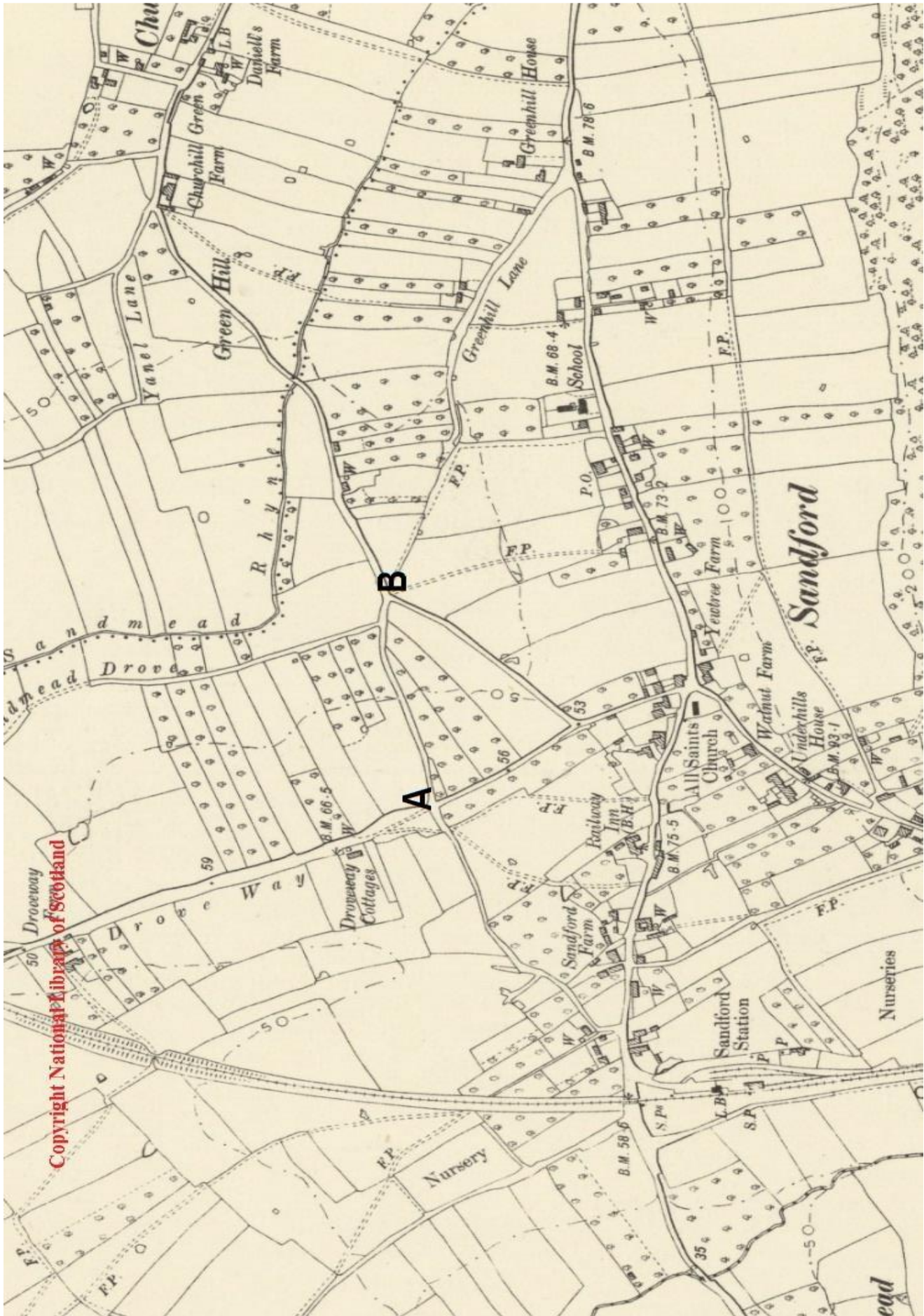
DOCUMENT 2
1811 SURVEYORS PLAN BRITISH LIBRARY



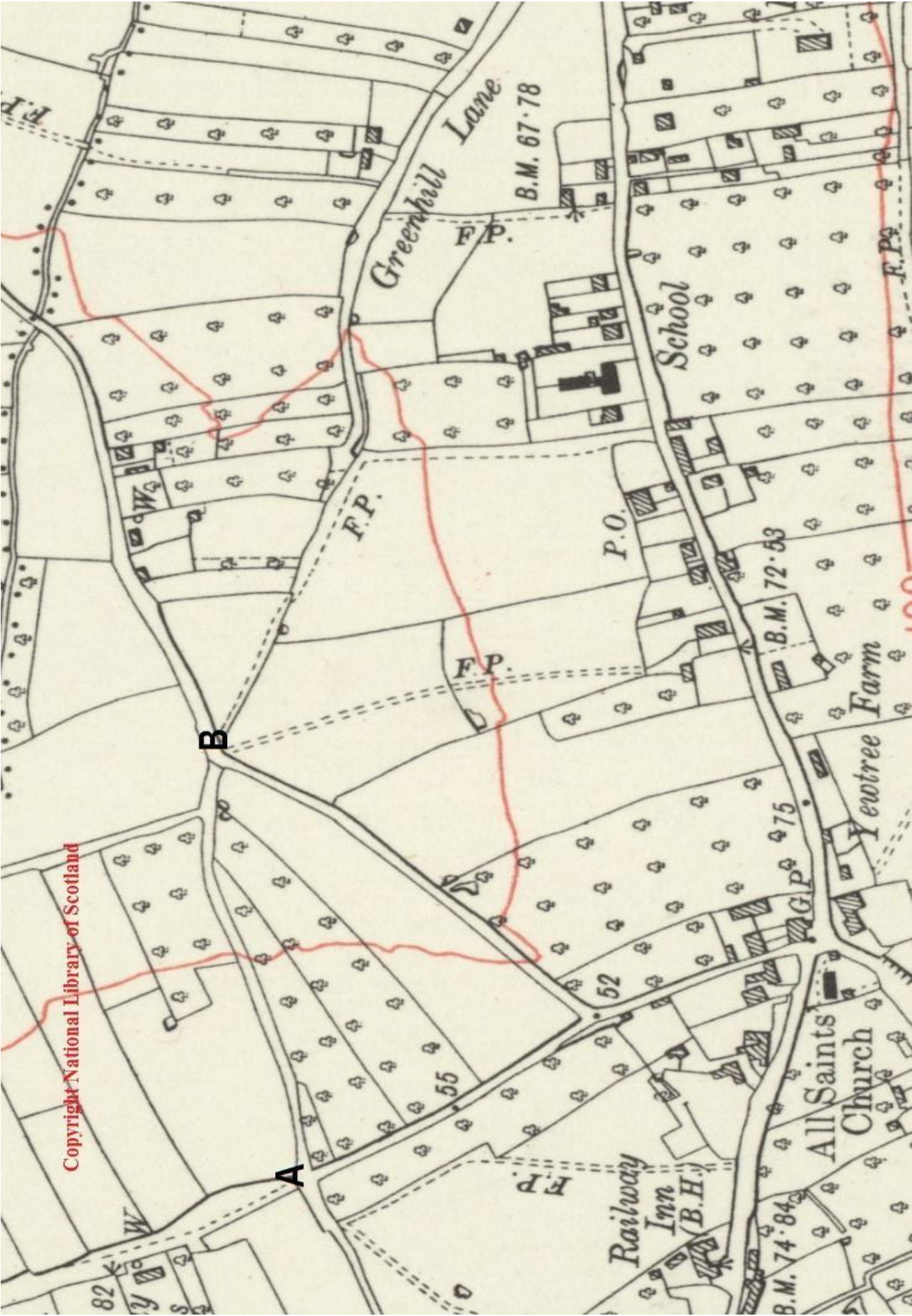


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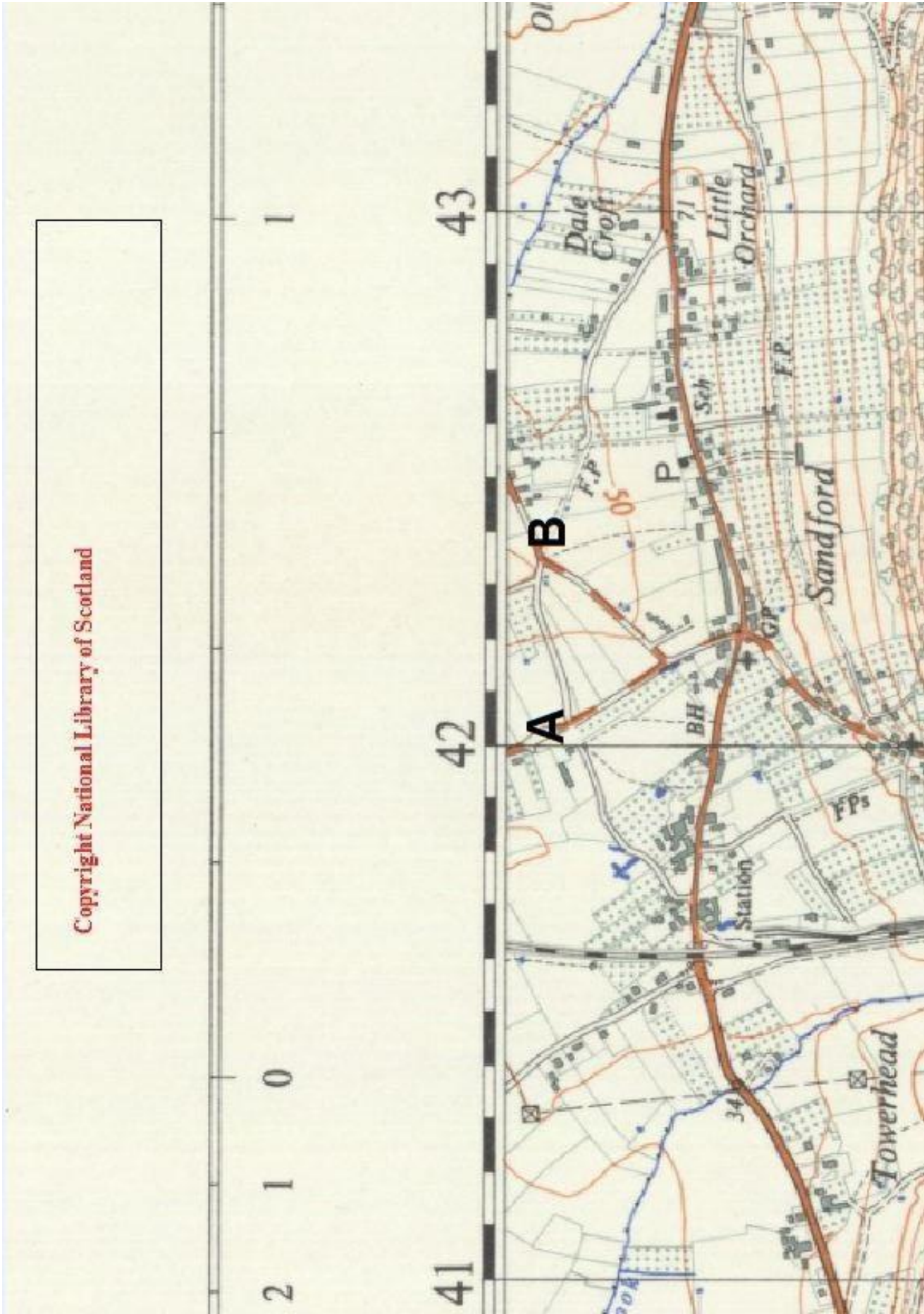
DOCUMENT 5
1904 ORDNANCE SURVEY MAPPING



DOCUMENT 6
1931 ORDNANCE SURVEY MAPPING



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DOCUMENT 8
Winscombe Parish Council Reclassification Document

Ref: CR/2010/01

..... WINSCOMBE Parish Council or
 Meeting

 Rural District
 Council

 Urban District
 Council

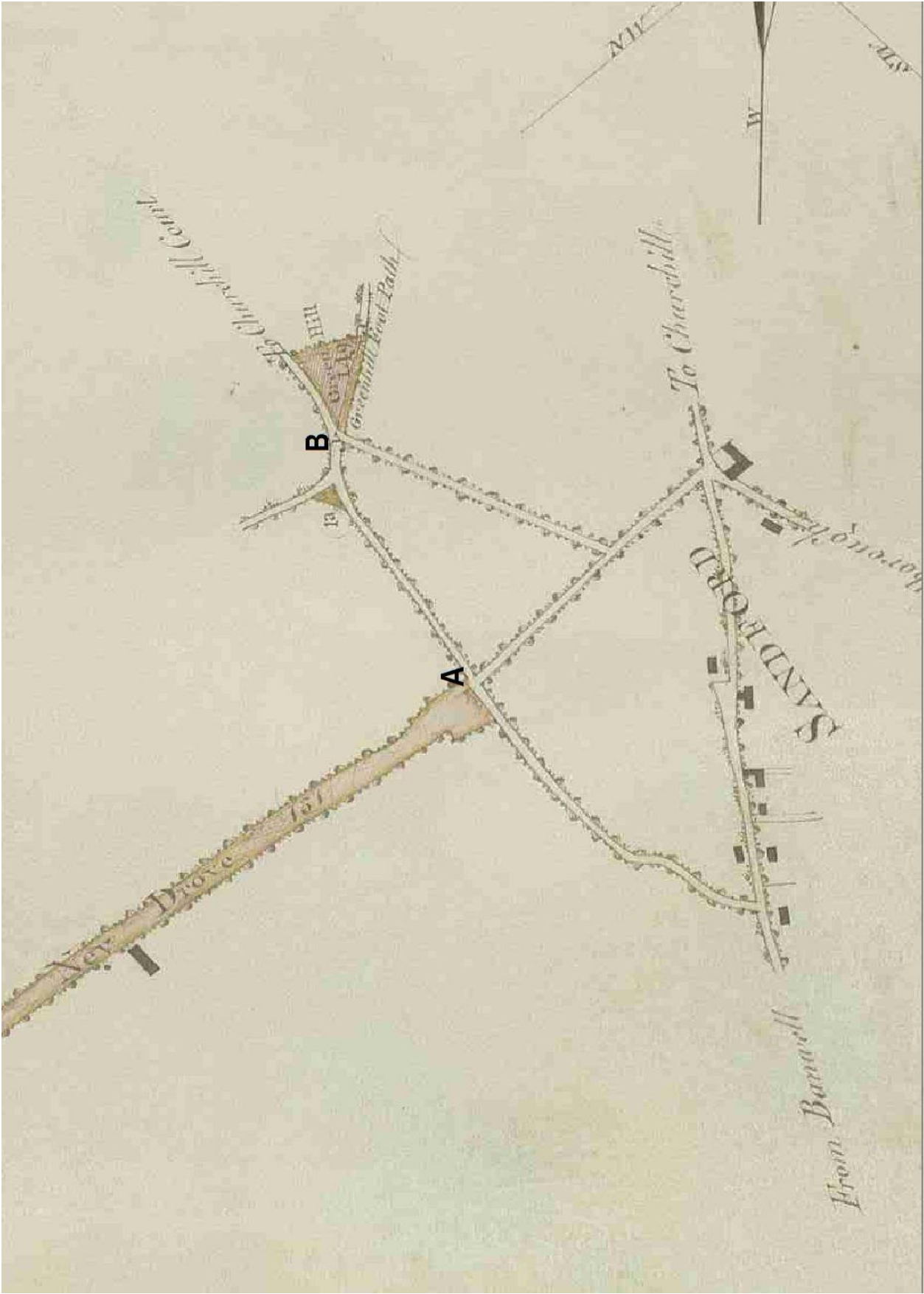
 Borough Council

C.R.P. No. on Definitive Map	Name of Lane or From/To	Proposed Re-classification either (a) by-way open to all traffic (b) bridleway or (c) footpath	Reasons for Re-classification
	<u>Sandford</u>		
29/77	<u>EYE POONER</u> Eye Pooner West & North to Churchill - Sandford Rd	BRIDLEWAY	
29/76	<u>BYSSIE LANE</u> Station Road to Sandford Lane.	Byway open to all traffic?	
29/67	<u>AWMY ROAD</u> Awy Road to Churchill Parish Boundary	Byway open to all traffic	
29/45	<u>GREENHILL LANE</u> Sandford Lane to Green Hill Road	Byway open to all traffic	
	<u>Winscombe</u>		
29/37	<u>WINSCOMBE DRIVE</u> A38 to Shipham Road	Byway open to all traffic	
29/36	<u>YADLEY LANE</u> Yadley Way to Junction with 29/11	Byway open to all traffic	
29/23	<u>BARTON DRIVE</u> Winscombe Hill Road to Barton Rocks	Byway open to all traffic	
29/11	<u>EASTWELL LANE & CHURCH LANE</u> A38 to 1/2 Square.	Byway open to all traffic	

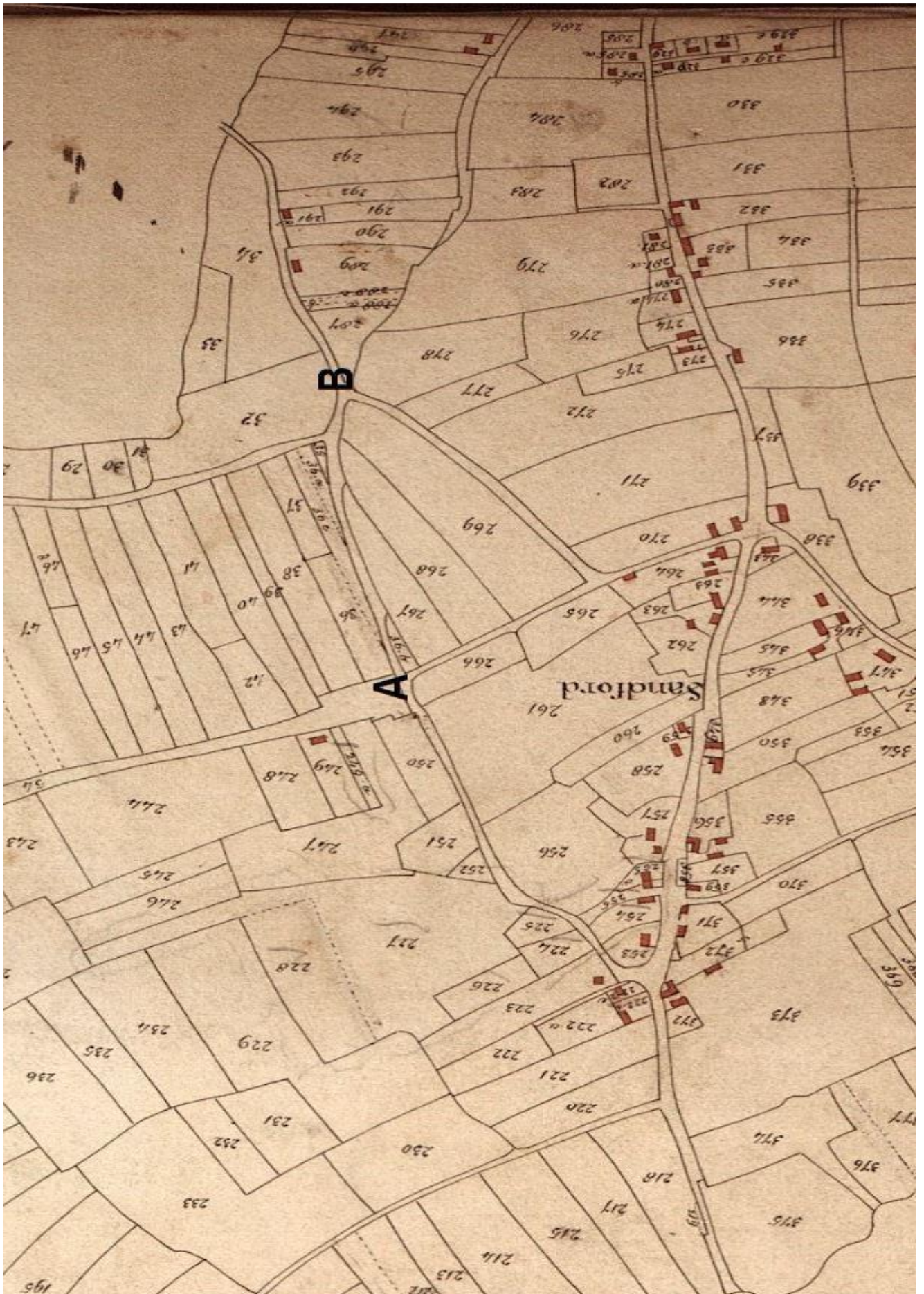
Some landowners are taking time to stop children from riding horses along these drives - lanes.

Signed for
 ..Winscombe Parish Council.. Cou
 Date 27-3-70
 J. Clerk

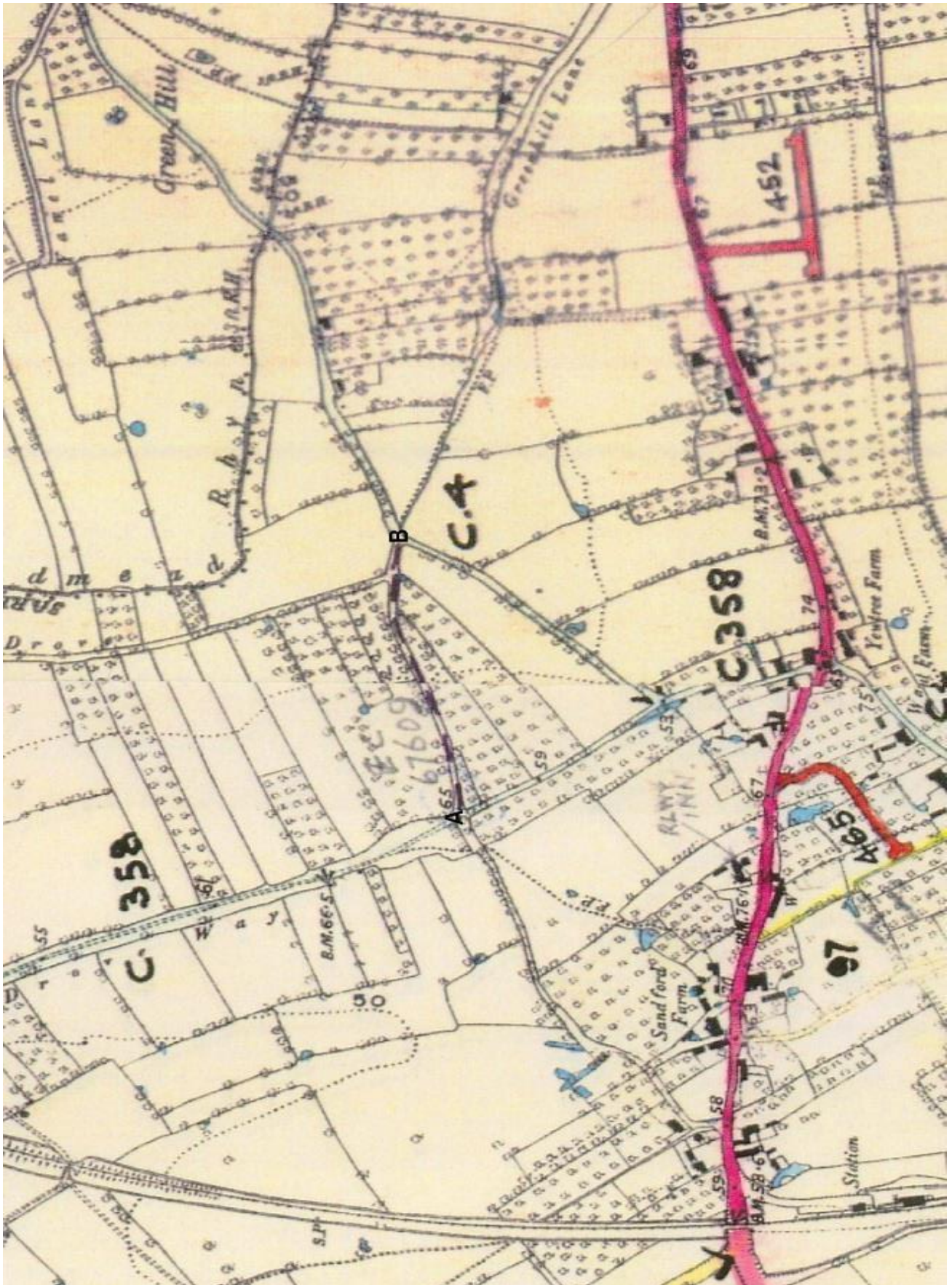
DOCUMENT 9
WINSCOMBE ENCLOSURE AWARD 1799

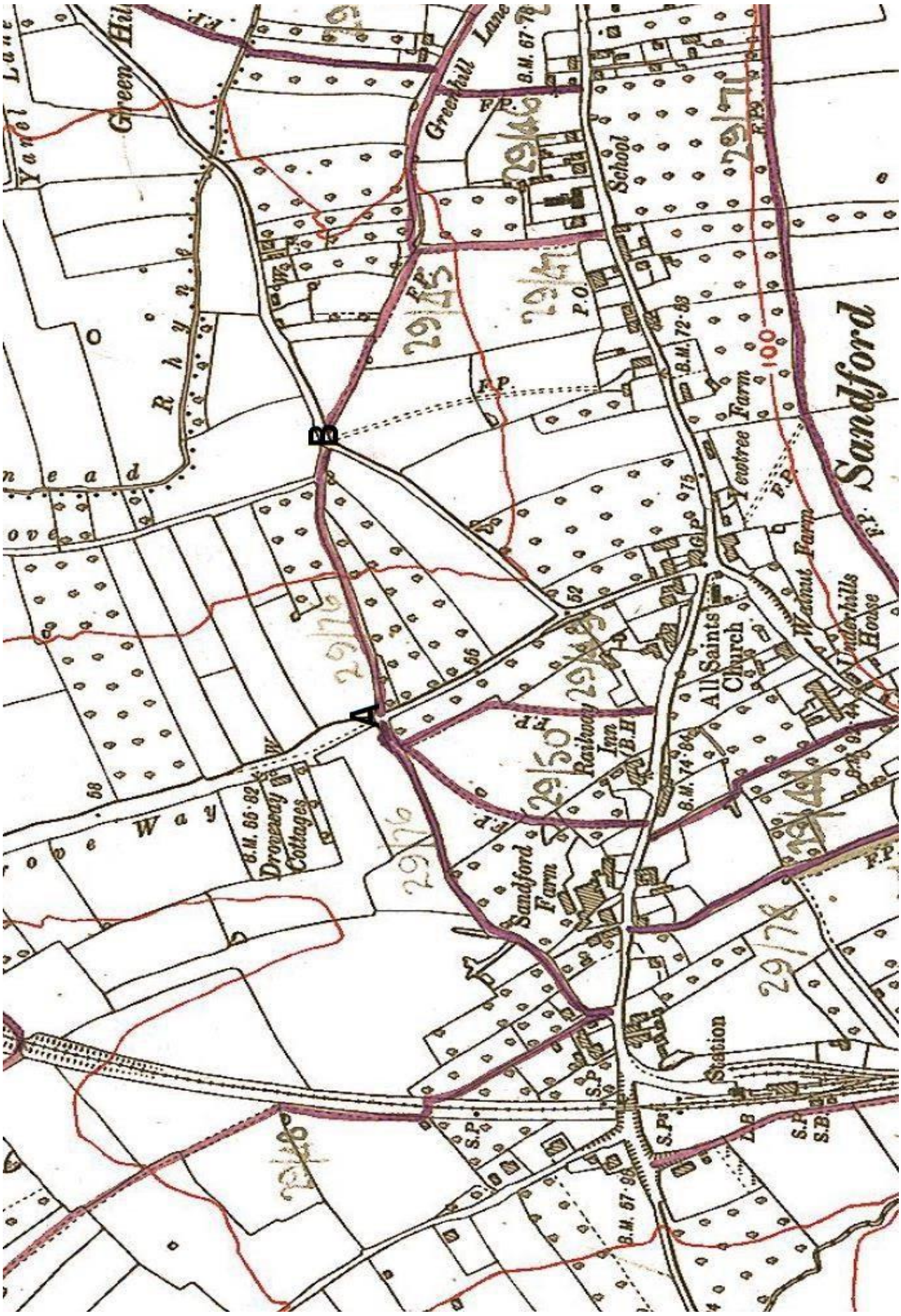


DOCUMENT 10
WINSCOMBE TITHE MAP 1843



DOCUMENT 12
HANDOVER MAP OF WINSCOMBE 1930





SOMERSET COUNTY COUNCIL

Wanscombe
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 :— *76* Path shown on 6" O.S. No. :— *17 N5* Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :—

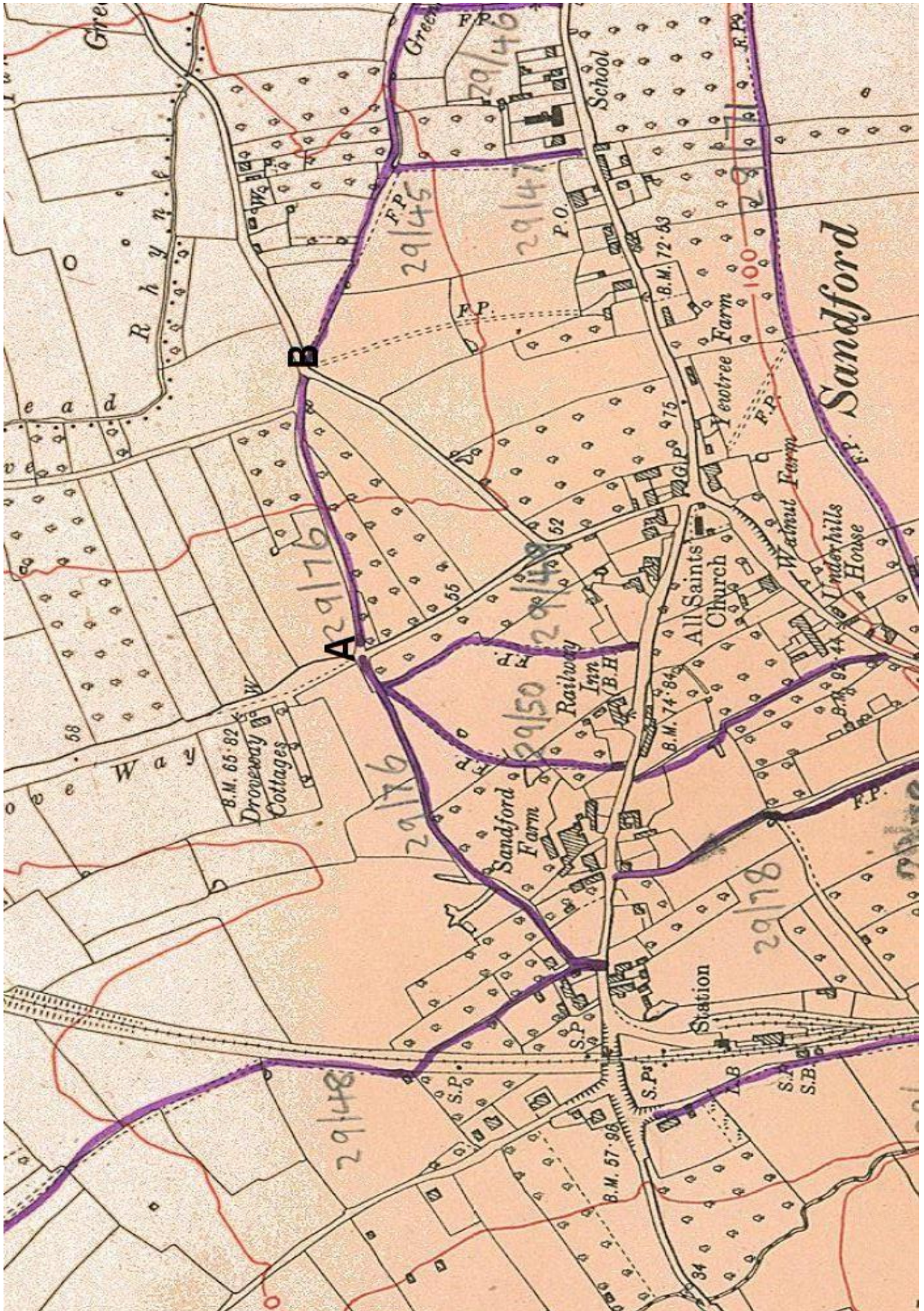
DESCRIPTION :— The path starts at *County Rd by Station drains*
N.E. along lane to Drive way County
road which it crosses & then continues
to Greenhill Road at FP 45

W 19008

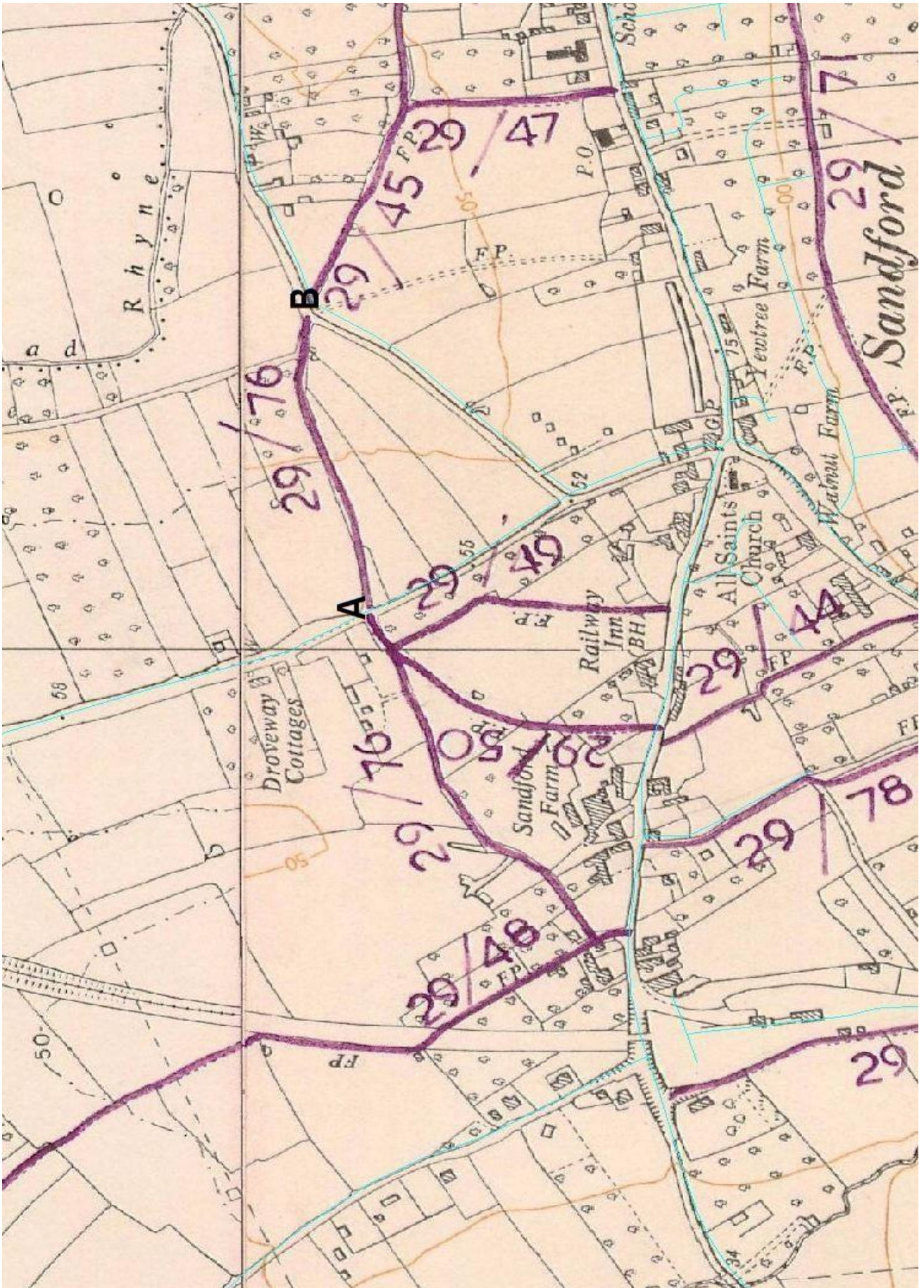
P.T.O.

(Please continue on second card if necessary)

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



DEFINITIVE MAP OF WINSCOMBE 1956



OBJECT NAMES BOOK SANDMEAD DROVE

*Names collected & entered by D.M. East by Sept 1866 in April 1867
 names collected & entered & initials in red by Capt. C. P. Nicholls R. G. M. 1867
 names collected & entered by D.M. East by Sept 1866 in April 1867*

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
<i>Drove-way Farm</i>	<i>Drove-way Farm</i>	<i>Messrs. A. M. Stephens & Co. Surveyors, 10, Pall Mall, London. See D.M. East's MS. No. 10</i>	XVII	4	1	<i>Applies to a farm & out building on a road about a mile east of the west end of Church Hill</i>
<i>Sandmead Drove</i>	<i>Sandmead Drove</i>	<i>Messrs. J. Millard & Co. Surveyors, 10, Pall Mall, London. See D.M. East's MS. No. 3</i>	XVII	4	144	<i>Applies to a grass lane extending 2 1/2 miles from the junction with the R. of the Church Hill to the N.E. of St. John's Church to the N.W.</i>
<i>Sandmead Rhyme</i>	<i>Sandmead Rhyme</i>	<i>Messrs. A. M. Stephens & Co. Surveyors, 10, Pall Mall, London. See D.M. East's MS. No. 10</i>	XVII	4	142	<i>Applies to a Rhyme commencing about 1/2 mile W. of the junction with the R. of the Church Hill & Rhyme in a N.W. direction</i>
<i>Yard Lane</i>	<i>Yard Lane</i>	<i>Messrs. J. Millard & Co. Surveyors, 10, Pall Mall, London. See D.M. East's MS. No. 3</i>	XVII	4	142	<i>A grass lane extending about 1/2 mile W. from the junction with the R. of the Church Hill Green Lane</i>
<i>Churchill Green Farm</i>	<i>Churchill Green Farm</i>	<i>Messrs. J. Millard & Co. Surveyors, 10, Pall Mall, London. See D.M. East's MS. No. 3</i>	XVII	4	2	<i>Applies to a small farm & out building situated on the S.W. corner of Churchill Green</i>

JR

WINSCOMBE PARISH COUNCIL

TEL: (0934 84) 2126
F. J. HIGGINS
Clerk

THE FERNS,
9 THE LYNCH, WINSCOMBE,
AVON, BS25 1AN

Date 26/6/89

No. 397

Mrs. J. Reed,
County Planning Officer,
Avon County Council,
P.O. Box 46,
Middle Gate,
Whitefriars,
Lewins Mead,
Bristol BS99 7EU.

COPL
PLANNING
No. 115436
Date: 27 JUN 1989
JR
File No.

Your Ref JR/DT F636

Dear Mrs Reed, Footpath 29/76 - Nye Road - Sandford

I am sorry for the delay in replying to your letter dated 13th April, 1989 due to difficulty in obtaining the information that you require which appears to be as follows:-

1. Drove House was built in 1953/54 for Mr. G. Hancock, before this there was a Lane between 214 & 215
2. The Hedge bordering 214 was removed soon after the House was built and at a later date the Hedge to the north bordering 215 was removed from the end of 214 to 217 where a Gate was erected across the Lane. After the Hedge bordering 214 was removed people walked up the driveway of Drove House to the eastern end of 214 where there was a Stile into 215.
3. When Mr. Hancock sold the property (Drove House) on 214 and the Field 215 to Mr. N. E. Wedlake who now lives at Davlen, Mead Lane, Sandford, Mr. Wedlake encouraged people to walk through the Field gate alongside the Hedge and Avon County Council erected the Footpath Sign, about five years ago, presumably with his permission and at about that time the Chairman of the Parish Council, Mr. J. Westlake, 30 The Lynch, Winscombe, and another member of the Parish Council, with difficulty, walked the old and correct line of the Footpath, but, most people preferred to walk along the north side of the Hedge and it is only since Mr. Wedlake sold the House but NOT the Field 215 that the Field Gate was padlocked.
4. It appears that the Hedge was removed either when or soon after Drove House was built.
5. Up until about two years ago, when Mr. Parnell bought Drove House, some people walked south of the Hedge and some walked north of the Hedge until the Field Gate was locked and Barbed Wire put across the top of the Gate.

I trust that this may help in establishing the correct Right of Way.

Yours sincerely



Your Ref JG/DT/F636

File F636
Drove House
NYE ROAD

COUNTY OF AVON PLANNING DEPARTMENT		
No.	130911	
Date	-9 JAN 1991	
INFO	ACKD	
3R	367	
File No.		

SANDFORD
AVON
5th JAN 1990
95 TEL 823855

Dear Ms J Gradwell

Reference Footpath AX 29/76

Thank you for your letter of the 3rd January 1990.

I am somewhat surprised at its content as I have never been approached or notified of any complaints in the two years of investigations. No member of the public has directly complained regarding the footpath to myself.

I acknowledge that on the definitive map of Wincambe the footpath is shown to follow inside the boundary shown on your map.

It has always been 'a bone of contention' between myself and the occupiers of the adjacent land Sandra PATERSON and Alan DODD whether the correct line is inside or the other side of the boundary into my house drive and garden.

On purchasing my house in August 1987 the then owner Mr. Norman WOOLAKE retained the field occupied by the above persons but agreed that the 30 year old position of the path would not follow the definitive map but follow inside the boundary of his retained field.

In addition Mr WOOLAKE forwarded to my solicitors the attached

Official declaration for the previous owner M. HANCOCK that
no-one had walked the path as shown on the definitive
Map for 30 years but instead followed inside the field
boundary adjoining house.

I - the following 10 years since the sale of the property
for M. HANCOCK to M. WOOLACRE and then to myself no-one
has walked the path as shown on the definitive Map.
I am not being obstructive in this matter but believe
that the footpath has by usage over the last 30 years
has altered from that shown on the definitive Map to inside
the boundary of the field owned by M. WOOLACRE, adjoining
the house & garden.

I would appreciate a meeting with you or a
representative in order that we can resolve this matter.

Yours Sincerely



S.J. PARNELL.

IN THE MATTER OF DROVE HOUSE NYE ROAD SANDFORD AVON

I CECIL GEORGE HANCOCK of Drove House Nye Road Sandford
in the County of Avon DO SOLEMNLY AND SINCERELY DECLARE
as follows:-

1. I am the owner of ALL THAT freehold property and land known as Drove House Nye Road Sandford in the County of Avon which is for the purposes of identification only edged red on the plan annexed hereto and marked Plan Number 1 (Plan 1) and also in part edged red in part edged yellow in part edged blue in part edged green in part edged brown and in part hatched black on the plan annexed hereto and marked Plan Number 2 (Plan 2)
2. The land edged red on Plan 2 was conveyed to me by a Conveyance dated the Twenty sixth day of February One thousand nine hundred and fifty eight and made between Evelyn Alice Vowles of the one part and myself of the other part
3. The land edged blue on Plan 2 together with the house and buildings thereon was conveyed to me by a Conveyance dated the Twelfth day of July One thousand nine hundred and fifty seven and made between Gilbert Charles Hancock of the one part and myself of the other part
4. The land edged green on Plan 2 was conveyed to me by a Conveyance dated the Twenty eighth day of April One thousand nine hundred and sixty and made between John Poole Champeney of the one part and myself of the other part
5. The land edged yellow on Plan 2 was conveyed to me by a Conveyance and Deed of Appropriation dated the Fifth day of November One thousand nine hundred and sixty five and made between Joan Beatrice Morgan of the first part the said Joan Beatrice Morgan Gilbert Charles Hancock

Reginald Norman Hancock Olive Dina Pearson and

of the second part and myself of the third part

6. The land edged brown on Plan 2 was conveyed to me by a Conveyance dated the Eighteenth day of November One thousand nine hundred and sixty three and made between Doris Harriett Mary Watts of the one part and myself of the other part and is subject to the provisions of a Dedication Agreement dated the Tenth day of December One thousand nine hundred and sixty three and made between myself of the one part and The Somerset County Council of the other part

7. No Conveyance has ever been executed in my favour in respect of the land hatched black on Plan 2

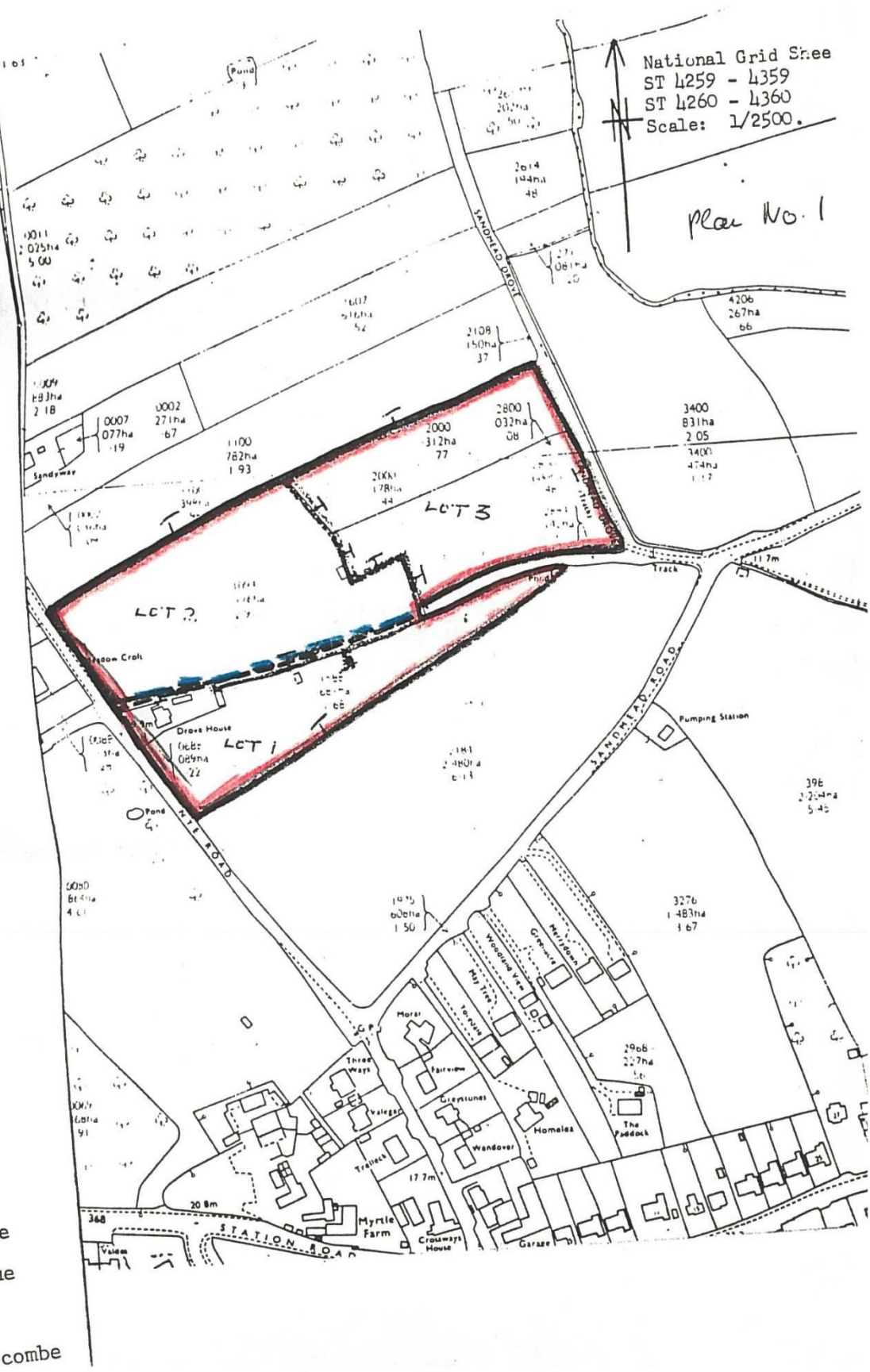
8. The land hatched black on Plan 2 was formerly the site of a Drove or Path leading from Nye Road Sandford to the western end of the Drove or Path as shown on Plan 1

9. Following the Conveyance to me of the land edged green on Plan 2 on the Twenty eighth day of April One thousand nine hundred and sixty I filled in the Drove and placed thereon top soil to the effect that the said Drove hatched black on Plan 2 was taken into and formed part of the field shown as Ordnance Survey Number 215 on Plan 2 to the intent that it now forms part of National Grid Number 1094 as shown on Plan 1

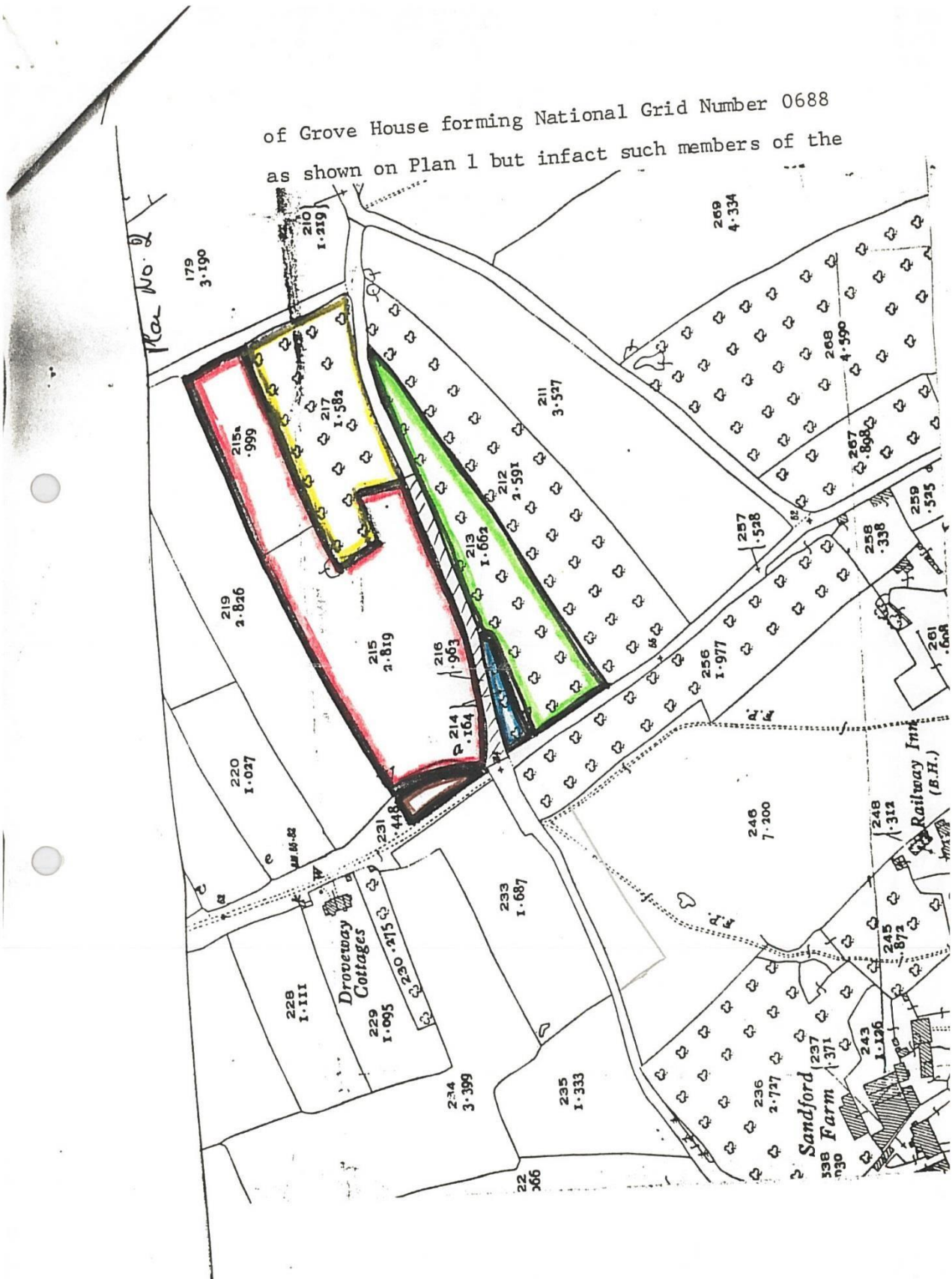
10. There is now a footpath leading from Nye Road Sandford aforesaid to the western end of the Drove in the approximate position shown by a broken blue line on Plan 1

11. On the Definitive Map for the Parish of Winscombe the footpath is shown as running through the garden

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Winscombe



of Grove House forming National Grid Number 0688
as shown on Plan 1 but infact such members of the



of Grove House forming National Grid Number 0688
as shown on Plan 1 but infact such members of the
public who use the footpath follow a route over
National Grid Number 1094 as shown on Plan 1 and
do not make use of my drive or garden as a public
footpath

12. When I filled in the Drove in 1960 or thereabouts
no one objected to my doing so and as from that date
I have been in full and free and undistrubed possession
of the land hatched black on Plan 2 without any adverse
claim thereto or objection thereto by or on behalf of
any person or persons and I have made no Acknowledgement
or made no payment to any other person or persons in
respect of my use and occupation of the said land and
I MAKE this solemn declaration conscientiously believing
the same to be true and by virtue of the provisions of
the Statutory Declarations Act 1835

DECLARED AT Winscombe
in the County of Avon
this 5th day of Novemb. 1981

} C. G. Hancock.

Before me Jonathan Webb

Commissioner for Oaths/Solicitor

**MEANING’ A FORM SUBSTANTIALLY TO THE LIKE EFFECT’
PARAS 10 AND 12 OF THE JOINT OPINION
BY GEORGE LAWRENCE QC AND ROSS CRAIL
SUPPLIED BY MR G PLUMBE**

Q.A3 Do different tests apply to the different elements of Schedule 14, paragraph 1?

10. *The application form:* Paragraph 1 of Schedule 14 itself contemplates variations on the basic prescribed form, either in the nature of adaptations to suit the particular circumstances of the case, or in the wider sense of departures from the wording or format of the prescribed form which do not matter because the document is “*substantially to the like effect*” as the prescribed form. That means that the document must contain the essential information required by the prescribed form, even if it is differently worded or laid out: see eg. the recent case of *James Hay Pension Trustees Ltd v. First Secretary of State* [2006] EWCA Civ 1387¹ helpfully drawn to our attention by our Instructing Surveyor. The prescribed form includes the words “*I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application: List of documents*”. We are instructed that a common variation of the form is the substitution of the words “*Please see attached checklist*” for these words. We do not think that it is essential for the list of documents to be written on the application form; a separate piece of paper will suffice so long as it is clearly identified as the list of documents referred to in the form or prepared in connection with the application. As we have said above, we also do not think a court would hold it to be a fatal defect if the list of documents were to be supplied separately and subsequently and the form said eg. “list to follow” or “documents to follow”, or if the “list of documents” section were just left blank. But we think there has to be a list of documents supplied at some stage (see further below, paragraph 12).

12. *The documentary evidence:* Paragraph 1 of Schedule 14 (in conjunction with the 1993 Regulations) clearly requires the applicant to identify (in list form) the particular items of documentary evidence upon which he relies in support of his application, *and to provide copies of them*. Unless and until the applicant has provided the surveying authority with an itemised list of documents and a set of copies of the listed documents, he cannot in our view be regarded as having complied with the statute. It has to be acknowledged that there may be documents of which for good reason the applicant cannot readily or at all obtain and provide copies, and exceptions to that requirement may have to be made; but we think that the requirement to provide copies should be complied with wherever reasonably possible. We are asked whether we think compliance is achieved by the applicant’s writing in place of “List of documents attached” such words as “see report”, accompanied by a detailed exposition of evidence sources and what they are said to indicate, but no copy documents. We do not think that can be regarded as the equivalent of providing copy documents, or as substantial compliance with the requirement to supply copies. Selected extracts, or summaries, or interpretations, of documents are very different from copies, which give the full picture and enable the reader to form his own impressions of the meaning and significance of the documents. There is no reason why the applicant should not voluntarily provide a statement or summary of the evidence as he sees it over and above complying with the requirement for

¹ See paras 34 and 35