

# North Somerset Council

<b>REPORT TO THE</b>	<b>PUBLIC RIGHTS OF WAY SUB COMMITTEE</b>
<b>DATE OF MEETING:</b>	<b>26 SEPTEMBER 2018</b>
<b>SUBJECT OF REPORT:</b>	<b>CLAIMED BYWAY OPEN TO ALL TRAFFIC, KING ROAD TO SPLOTT PADDOCK, CHURCHILL</b>
<b>TOWN OR PARISH:</b>	<b>CHURCHILL</b>
<b>OFFICER/MEMBER PRESENTING:</b>	<b>ELAINE BOWMAN</b>
<b>KEY DECISION:</b>	<b>NO</b>

## RECOMMENDATIONS

It is recommended that the Public Rights of Way Sub Committee deny the application as there is insufficient evidence to support the making of a Definitive Map Modification Order, also noting that the applicant has confirmed its withdrawal.

### 1. SUMMARY OF REPORT

This report considers an application which was made on the 4<sup>th</sup> November 2004. That application requested that a route, in the Parish of Churchill, should be recorded as a Byway Open to all Traffic. Such application for a Definitive Map Modification Order is submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of this request, should an Order be made and confirmed, would be to amend the Definitive Map and Statement for the area.

The application, submitted by Woodspring Bridleways Association, has referred to two documents 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 59 as A-B-C-D-E-F-G-H.

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 59

**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 the Documentary Evidence

**Appendix 5** – Consultation and Landowners Responses

**Appendix 6** – Summary of Evidence and Conclusion

**Document 1** – Archaeological Sites and Features Plan of Park Farm, Churchill

**Document 2a, 2b, and 2c** – Avon County Council Small Holdings Survey

**Document 3** – Churchill Tithe Map 1840

**Document 4** – Finance Act 1910

**Document 5** – Handover Map 1930

**Document 6** – Parish Survey Plan

**Document 7a & 7b** – Draft Map – Definitive Map Process

**Document 8a & 8b** – Draft Modification Map – Definitive Map Process

**Document 9a & 9b** – Provisional Map – Definitive Map Process

**Document 10** – Definitive Map 1956

## 2. POLICY

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

## 3. DETAILS

### Background

#### i) The Legal Situation

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

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

#### ii) The Role of the Committee

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

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the 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 the route, A-B-C-D-E-F-G-H, most of which is not recorded on the Definitive Map whereas points D-E are currently recorded on the Definitive Map as Footpath AX 14/32, it is necessary for the Committee to have regard to two legal tests:

1. Section 53(3)(c)(i) relating to the sections which are 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 section recorded as Footpath AX 14/32 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 is of the opinion that 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 Churchill Parish Council, Local members, interested parties and relevant user groups have also been included. Detail of the correspondence that has been received following these consultations is detailed in **Appendix 5**.

## **5. FINANCIAL IMPLICATIONS**

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

### **Costs**

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 were considered are:

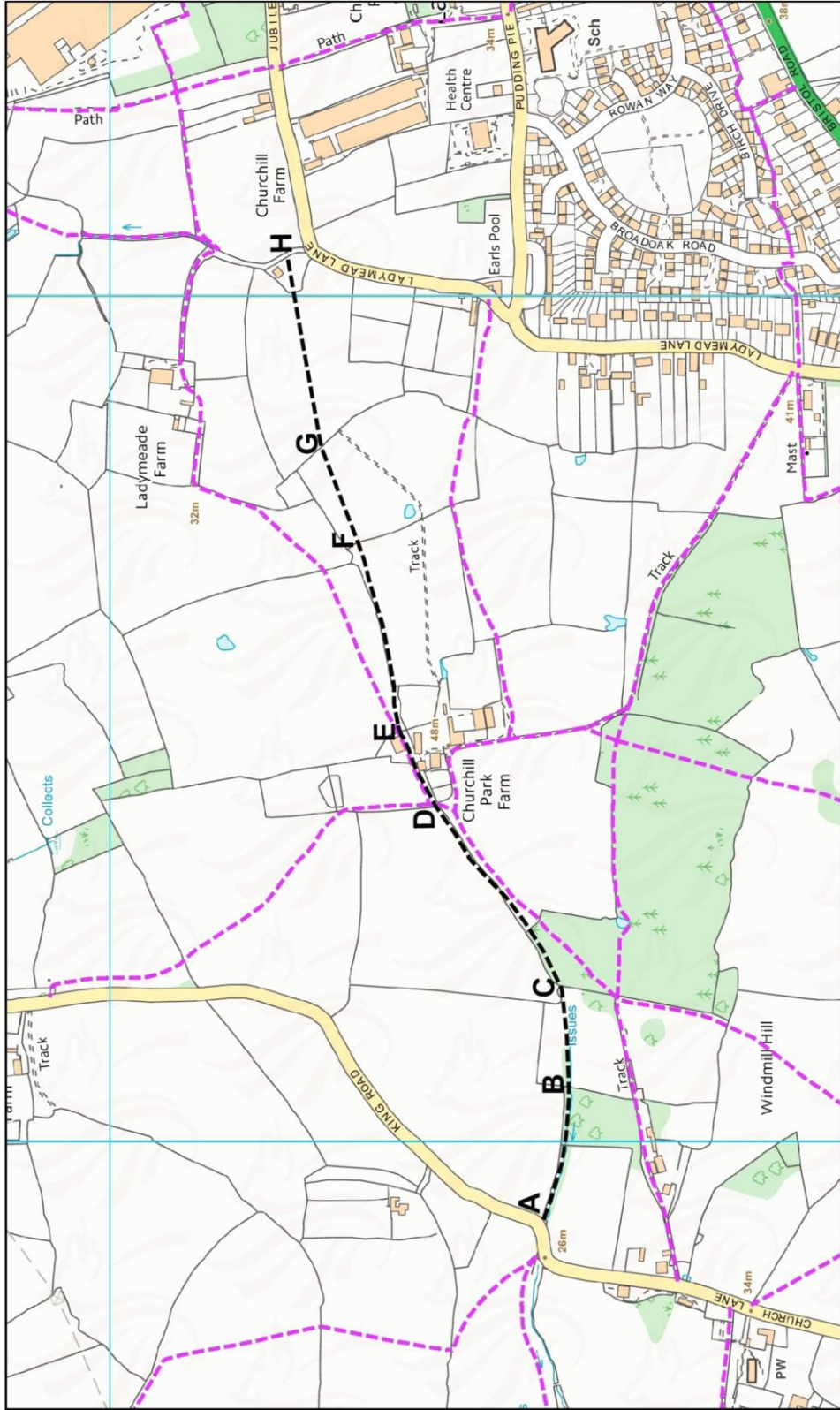
1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C-E-F-G-H as a Byway Open to all Traffic
2. Whether the application described in 1, should be denied as there is insufficient evidence to support the making of an Order.
3. If the Committee accepts the recommendation of the Officer that an Order should not be made for A-B-C-D-E-F-G-H it is understood that the Applicant may exercise their right to appeal against this decision.

### **AUTHOR**

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

### **BACKGROUND PAPERS**

Public Rights of Way File Mod 59



**North Somerset COUNCIL**

**MOD 59 - Claimed BOAT**  
 King Road to Ladymead Lane, Churchill

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

Scale: 1:6000  
 Drawn by: Lucy Roca  
 Date: 26 March 2018  
 Time: 15:19:56

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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 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 Byway 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 4 November 2004 from Woodspring Bridleways Association ("The Association"). The basis of this application is that a route should be recorded as a Byway Open to all Traffic on the Definitive Map for the area. Submitted with the application was reference to historical documents which the applicant felt were relevant.

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

Archaeological Sites and Features Plan of Park Farm, Churchill.  
Avon County Council Small Holdings Survey.

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

This matter is currently recorded on the Definitive Map Register as Mod 59.

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 from the adopted highway known as King Road, Point A and proceeds in an easterly direction for approximately 160 metres to Point B, continues to the east for approximately 120 metres through a field to boundary at Point C. The route then proceeds north-easterly for approximately 260 metres, to Point D, where it then follows the line of Footpath AX14/32, through Churchill Park Farm for approximately 90 metres to Point E. From this point the route leaves Footpath AX 14/32 and continues along the field boundary in an easterly direction for approximately 230 metres to Point F, then continues in a north easterly direction for approximately 120 metres to Point G and continues in an east north easterly direction for approximately 230 metres Point H for whereby the route terminates on Ladymead Lane.
3. This claimed Byway open to all Traffic is illustrated as a bold black dashed line on the attached Location plan EB/MOD 59 (Scale 1:6000)



## Analysis of Applicants Evidence

The claim is based on documentary evidence suggested by the applicant. This route is illustrated on the Location Map EB/MOD 59, the same numbering has been imposed on the following extracts for completeness. (Scale 1:6000).

### Archaeological Sites and Features Plan of Park Farm, Churchill.

The applicant has referred to this document within the original application. This document demonstrates a plan which shows the claimed route indicated as parallel dashed lines for its full length. Alongside this depicted route, it is labelled as 'Course of Duck Street (SMR 1528)'.

A copy of this plan is attached as **Document 1**.

### Avon County Council Smallholdings Survey

The applicant has also referred to this document within the original application. It is believed that this document relates to the plan as discussed above.

*'... The street can be traced westward to Sandford where it merges with the Banwell Road (A368) and eastward across the middle of Park Farm to a fork where it branched southward along Ladymead Lane and northward to Stock along Duck Lane (no disused). Although most of it was already stopped up by the early 19<sup>th</sup> century, it is noticeable that the remaining public footpaths between Ladymead Lane and Lower Court Farm still closely follow the alignment of the old highway. It is worth noting here that there are signs that the area to the north and west of the farm may have been crossed by a complex network of ancient tracks, perhaps associated with the parish boundary and influencing the outline of the farm and the park which preceded it, but this requires further study. The course of Duck Street Park Farm, from west to east, is as follows:*

*a. The street approaches the farm through Whathills towards the overgrown corner of Stoney Ground (Hedge 14) at the hedge junction between Stoney Ground and Bridewell Bottom. Immediately on the west side of this junction the street appears as a short by steeply eroded gully, but above it there is some ditching on the inside of hedge 14 which also appears to be associated with the old trackway. These features do not lend themselves to easy interpretation, and may represent a junction with another ancient route from the north-west.*

*b. It continues as a low embankment alongside the northern ledge of Bridewell Bottom which becomes less distinct on entering Home Ground. At some point along the northern hedge of Home Ground the street apparently crossed to the opposite side into Stoney Ground, and can be clearly made out as a ditch entering North Ground at the north-west corner of the farmhouse garden.*

*c. Running along the outer side of the garden wall, the ditch passes beneath a small cartshed built out from the wall next to the farmyard entrance. This presumably accounts for the subsidence and heavy buttressing on the outer side of the building.*

*d. The ditch continues along the outer side of the hedge of the paddock on the north-east side of the farmstead, up to the north-west entrance of Five Acres.*

*e. Beyond the entrance, the ditch is less distinct as it runs alongside the northern hedge of Five Acres. Towards the eastern end of the hedge it begins to diverge southward, so that it crosses into Old Walls about 20 metres away from the hedge junction at the north-east corner of Five Acres. This crossing is still marked by a kink in the western hedge of Old Walls. At the hedge junction itself, there is a 15 metre gap between North Ground and Old Walls infilled with a substantial bank and some hedging (Hedge 25). This appears to represent the approach of another ancient route from the north, aligned on Windmill Hill, which once joined Duck Street from Iwood.*

*f. Continuing across Old Walls, the ditch can be easily made out. It still served as a field boundary in the 1840s which survived as a row of trees as late as 1884. On the east side of Old Walls, the ditch apparently passed through a gap in the park wall, since filled in, about 50 metres from the hedge junction at the north-east corner of the field.*

*g. Heading across Park Walls toward Ladymead Cottage, the ditch becomes broader and deeper. A field boundary which ran along the south side of the ditch also continued in use into the early years of this century.*

*h. The ditch spreads out around the boundary of the garden of Ladymead Cottage next to Ladymead Lane. This triangular area, known as Splott Paddock in 1840, was apparently created out of the waste ground laying between the fork into Ladymead Lane and Duck Lane.*

A copy of this extract is attached as **Document 2a, 2b, and 2c.**

### **Analysis of the Documentary Evidence**

The claim is based solely on Documentary Evidence of which is listed in chronological order. This route is illustrated on the plan attached Location Plan EB/MOD59 for completeness showing the route A-B-C-D-E-F-G-H.

#### **Churchill Tithe Map 1840 – North Somerset Council**

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 Churchill Tithe Map represents the area of Churchill, which is the region that the claimed route A-B-C-D-E-F-G-H is located. The extract of this map does not show any depiction of the claimed route as a through route. As this route falls upon two sections of the Tithe Map, these have been merged together for the purpose of this report.

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

#### **Finance Act 1910 – North Somerset Council**

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 at this time.

The plan held by North Somerset only demonstrates the area of map which would have shown the location of Points A, B and C. However, there appears to be no route depicted on the map, only that the route would appear to cross through a wooded region all the way to Point C.

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

#### **Handover Map 1930 – North Somerset Council**

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

Like other plans discussed, this map does not depict the claimed route or give any indication of its status.

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

### **Definitive Map 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.

For completeness, the Parish Survey Map is attached as **Document 6**, The Draft Maps as **Document 7a and 7b**, The Draft Modification Map as **Document 8a and 8b**, The Provisional Map as **Document 9a and 9b**, and the Definitive Map as **Document 10**.

As can be seen, none of these maps show any indication of the claimed route, therefore provide no assistance with this claim.

### 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
Atkins Global	No Objection	We refer to the below or attached order and confirm that we have no objections.
Bristol Water	No Objection	We confirm that we have no objection to the proposed stopping up modification order at the above address
Mrs Masters	Objection	I have discussed this case at length with Mrs. Edwards and I am instructed to say that the evidence does not support the claim – on those grounds please note the abovementioned Application will be vigorously resisted.
M Dolton – Churchill Parish Council	Objection	The Churchill Parish Council does not support the modification of the footpath. The council holds the view that to permit all traffic on the Byway would be to the detriment of other users, the environment, and is inappropriate in the area through which the Byway passes. Furthermore, the council does not believe that the applicant has sufficiently evidenced historical use for such purpose.
Openreach	No Objection	Openreach does not 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.
G Plumbe – Green Lanes Protection Group	Objection	As stated in the application "Ladymead Cottage Slot Paddock County Road via the ancient Rd h,g,f,e,d,c,b and through the ancient sunken road to King road corner" NSC map refs ST 439604 - ST 450608 I object to the proposed modification for the reasons set out below.

#### **Facts**

The application, in respect of listed evidence relied on in support, says:

"We attach copies of the following documentary evidence ... in support of this application:-

(iv) Park Farm Archaeological sites & features and booklet from ACC Small holdings Survey of Churchill Park Farm Langford"  
Signed ... Dated 4/11/04

#### **The law**

NERCA 2006

67 Ending of certain existing unrecorded public rights of way  
(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-

But this is subject to subsections (2) to (8). (3) Subsection (1) does not apply to an existing public right of way over a way if -  
(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

**SCHEDULE 14 TO THE WILDLIFE AND COUNTRYSIDE ACT 1981**

Applications for certain orders under part III, Section 53

Form of applications

1) An application shall be made in the prescribed form and shall be accompanied by—

(a) .....

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

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

**Evidence supplied**

The evidence provided with the application has kindly been supplied by NSC. It consists of:

(i) An OS 2nd edition 1903 map of the area.

(ii) A local map marked "Drawings [??] 2" to a mile but not copied to Scale 1811".

(iii) A local map (unidentified scale) entitled "PARK FARM, CHURCHILL Archaeological Sites and Features" showing the position of the various lanes.

(iv) A section of text said (in m/s) to be "From ACC.

Smallholdings Survey Churchill Park Farm Langford.

(v) A local map (scale unidentified) showing the extent of Park Farm and the location of sundry ways in the locality.

(vi) A repeat of "PARK FARM, CHURCHILL Archaeological Sites and Features" but extending further west.

**Validity of application**

Although the text of the Archaeological Survey was submitted, we have no information as to the supply of a 'booklet from ACC'. If that was omitted then the application was not complete and does not qualify for exemption under s63(3).

**Relevance of evidence**

The three maps listed as (i) to (iii) above assist as to location, but they provide no information as to public rights.

The text of the archaeological survey does not address the matter of public rights. It is evidence of physical features suggestive of some sort of track but this could easily have been a bridleway or drove road. There is no evidence whatsoever of public vehicular rights.

In my submission this application does not succeed as to the burden of proof which rests with the applicant, and it may not in case qualify for exemption under s63(3) depending on whether the booklet was supplied.

D Mallinson – Green Lanes Protection Group      Objection

The applicant, Woodspring Bridleways Association (WBA), listed one item of documentary evidence in support of their application, a Smallholdings survey of Churchill Park Farm, Langford carried out by the County of Avon, and a map showing archaeological sites and features at Park Farm, Churchill, which is apparently an extract from the survey.

I think that the evidence from this survey is insufficient to show public rights over the route claimed.

The map of Park Farm shows a route (similar to the route applied for) labelled "Course of Duck Street (SMR 1528)" and the text says that Duck Street "can be traced eastward across the middle of Park Farm to a fork where it branched southward along Ladymead Lane and northward to Stock along Duck Lane (now disused). Although most of it was already stopped up by the early nineteenth century, it is noticeable that the remaining public footpaths between Ladymead Lane and Lower Court Farm still closely follow the alignment of the old highway." But the authors of the survey do not provide any evidence that this route was a public vehicular highway as claimed by WBA. They identify the route with a gully (page 16 of the survey), a ditch (pages 16, 17 and 18) and an embankment (page 17) and note that a cart shed and the park wall are built over it (page 17), but do not provide any archaeological or documentary evidence to show that these physical features formed a through route, let alone provide evidence of its public rights of way status. If it were a through route, the fact that a cart shed and the park wall were built over it suggests that it was not public.

I also note that the route labelled as SMR1528 on the map of Park Farm is not recorded on North Somerset Council's online record of archaeological sites (<http://map.n-somerset.gov.uk/HER.html>). This suggests to me that the survey's identification of a through historic route across Park Farm has been revised by subsequent archaeological expertise, and is no longer accepted.

The route claimed by WBA is not shown on early maps, i.e. Day and Masters (1782), the first edition 1 inch to 1 mile Ordnance Survey map (1811), Greenwood (1822) and the Churchill tithe map (1840). This is not consistent with it being a historic public vehicular way as claimed by WBA.

During this process, both verbal and written confirmation has been received from the Applicants stating that they have no wish to pursue this claim further. An email dated 3 April 2018 from the Applicant Mrs V Craggs has confirmed this. For completeness, the Officer has decided that the full report would be presented to the Committee.

### **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.

### Summary of Evidence and Conclusion

#### Summary of Documentary Evidence

None of the evidence detailed in this report other than the Archaeological Sites and Features Plan of Park Farm, Churchill show the claimed route. The only evidence that can be obtained from this Document regarding its date of production is that it was produced by Avon County Council. As detailed in Document 2a, b, and c, any lane which may have existed was already stopped up by the early 19<sup>th</sup> Century. This statement would seem to be supported by the Tithe Map of 1840.

As the Applicants have decided not to pursue this application further, and have not provided further evidence to support their claim, no further evidence has been sought by North Somerset Council outside of those records already held.

The non-existence of this route is further supported during the production of the Definitive Map in 1950. At no stage through this process was any suggestion made that a route of any status should be recorded on the alignment shown on the Location Plan. As can be seen from the Definitive Map, a network of Public Footpaths was recorded.

Taking all the documentary evidence into consideration there is no evidence to support the existence of the claimed route A-B-C-D-E-F-G-H.

#### Consultation Responses

As detailed within Appendix 5 a total number of 7 responses were received, four of these being letters of objection. The objections received relate to the legality of the application and the suitability of the route being claimed.

#### Conclusion

This application affects a route A-B-C-D-E-F-G-H part of which (D-E) is already recorded on the Definitive Map as a Footpath AX 14/32. To alter the status of a route on the Definitive Map, the evidence must indicate that the route which is already recorded “**ought**” to be shown as a route of a different status. This is considered a stronger test than a simple addition to the Definitive Map, where the requirement is that a right of way “is reasonably alleged to subsist”. The term “ought” involves a judgement that a case has been made and that it is felt that the evidence reviewed in the investigation supports the application on the balance of probabilities.

Having regard for the legal tests that should be applied in respect of the route A-B-C-D and E-F-G-H “does a route subsist or is reasonably alleged to subsist”, the historical evidence does not show any evidence to support the existence of this route or that public rights having been established.





From ACC. Small Holdings Survey  
Churchill Park Farm Langford

incorporated into the barn which, like most of the present stone buildings, were built between 1840-84. The house itself has been much modified from time to time, but the interior of the eastern wing may retain some of the original structure. Two large ponds which stood on the south side of the farmstead have been filled in or built over in more recent times.

DMMO already put in 18/07/04

DUCK STREET (SMR 1528, Grade II) Duck Street is an ancient track of indeterminate age which can still be identified as a sunken holloway of up to 3 metres depth running west to east from Churchill Green to the western boundary of Park Farm. Most of this section was still in use in the early years of this century, but now only serves as a drain or watercourse into Churchill Rhyne. Its name, together with that of 'Duck Lane' which it joins at Stock, is still a puzzle, but the 'Street' element, which suggests a metalled road, is often of Roman origin. It certainly pre-dates King Road which deviates through two sharp right angles as it crosses the street in order to follow the older line for a short distance before continuing its north-south course.

DMMO

The street can be traced westward to Sandford where it merges with the Banwell Road (A368), and eastward across the middle of Park Farm to a fork where it branched southward along Ladymead Lane and northward to Stock along Duck Lane (now disused). Although most of it was already stopped up by the early 19th century, it is noticeable that the remaining public footpaths between Ladymead Lane and Lower Court Farm still closely follow the alignment of the old highway. It is worth noting here that there are signs that the area to the north and west of the farm may have been crossed by a complex network of ancient tracks, perhaps associated with the parish boundary and influencing the outline of the farm and the park which preceded it, but this requires further study. The course of Duck Street through Park Farm, from west to east, is as follows:

- a. The street approaches the farm through Whathills towards the overgrown corner of Stoney Ground (Hedge 14) at the hedge junction between Stoney Ground and Bridewell Bottom. Immediately on the west side of this junction the street appears as a short but steeply eroded gully, but above it there is some ditching on the inside of hedge 14 which also appears to be associated

with the old trackway. These features do not lend themselves to easy interpretation, and may represent a junction with another ancient route from the north-west.

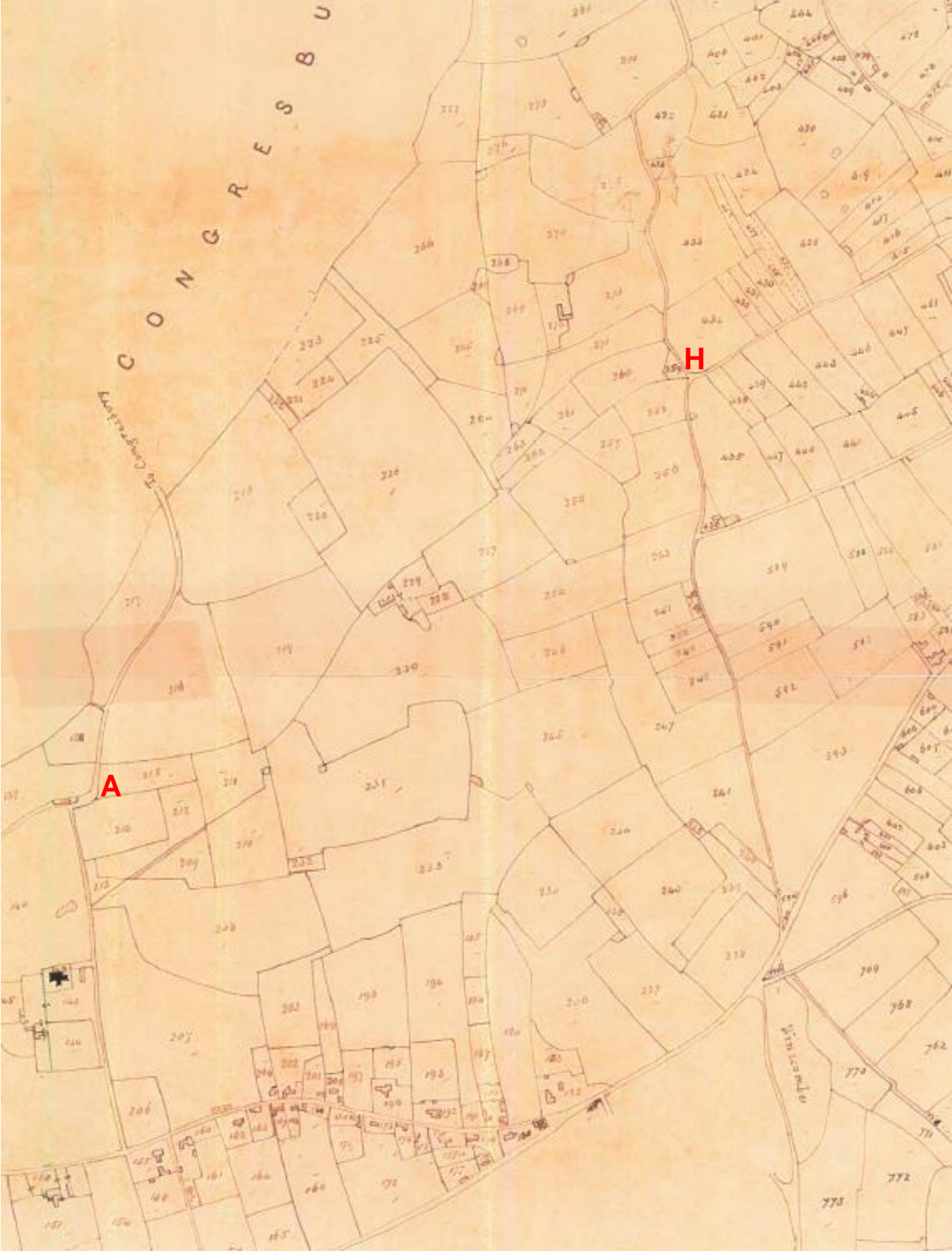
- b. It continues as a low embankment alongside the northern hedge of Bridewell Bottom which becomes less distinct on entering Home Ground. At some point along the northern hedge of Home Ground the street apparently crossed to the opposite side into Stoney Ground, and can be clearly made out as a ditch entering North Ground at the north-west corner of the farmhouse garden.
- c. Running along the outer side of the garden wall, the ditch passes beneath a small cartshed built out from the wall next to the farmyard entrance. This presumably accounts for the subsidence and heavy buttressing on the outer side of the building.
- d. The ditch continues along the outer side of the hedge of the paddock on the north-east side of the farmstead, up to the north-west entrance of Five Acres.
- e. Beyond the entrance, the ditch is less distinct as it runs alongside the northern hedge of Five Acres. Towards the eastern end of the hedge it begins to diverge southward, so that it crosses into Old Walls about 20 metres away from the hedge junction at the north-east corner of Five Acres. This crossing is still marked by a kink in the western hedge of Old Walls. At the hedge junction itself, there is a 15 metre gap between North Ground and Old Walls, which is now infilled with a substantial bank and some hedging (Hedge 25). This gap appears to represent the approach of another ancient route from the north, aligned on Windmill Hill, which once joined Duck Street from Iwood.
- f. Continuing across Old Walls, the ditch can be easily made out. It still served as a field boundary in the 1840s which survived as a row of trees as late as 1884. On the east side of Old Walls, the ditch apparently passed through a gap in the park wall, since filled in, about 50 metres from the hedge junction at the north-east corner of the field.

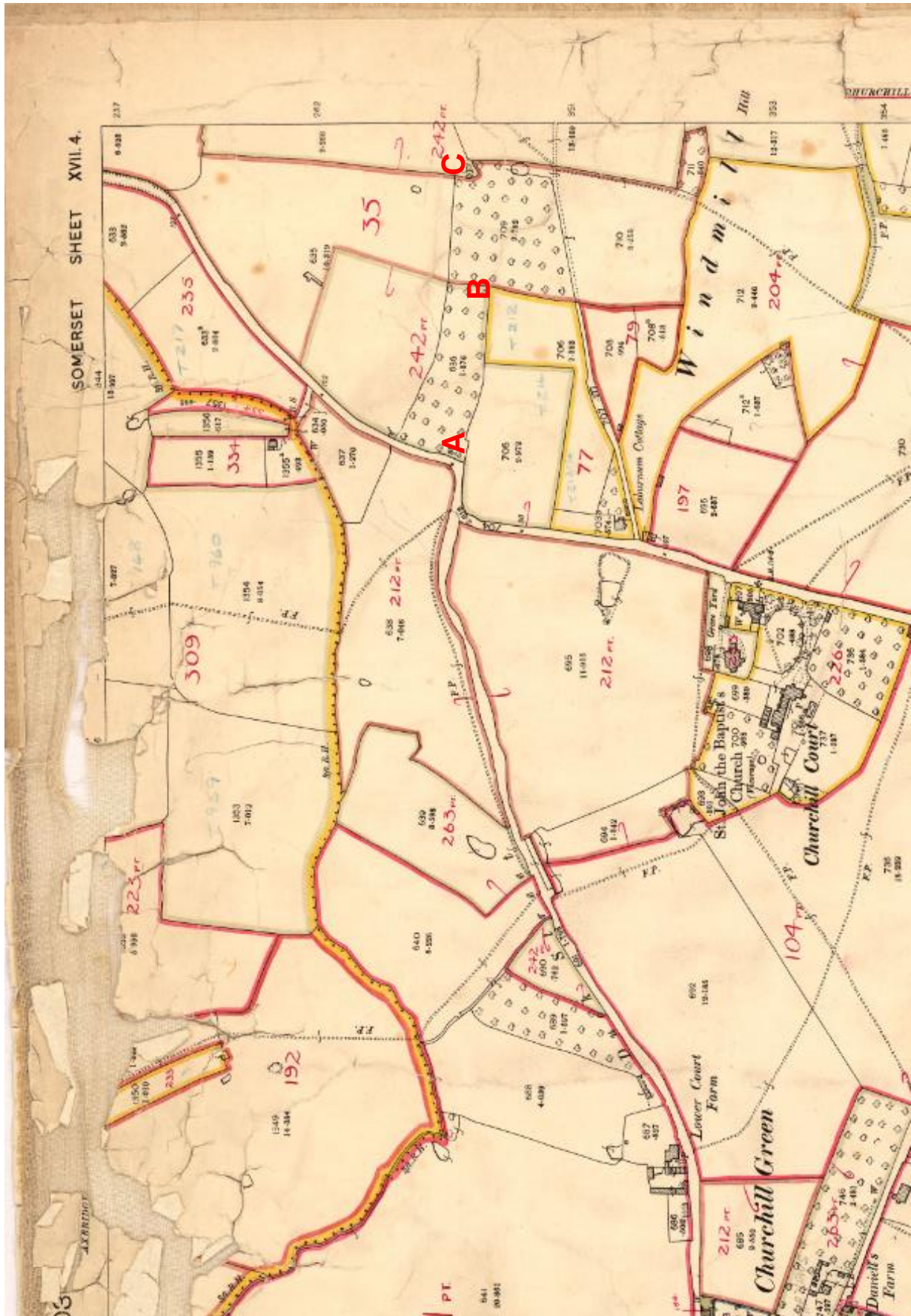
- e. Heading across Park Walls towards Ladymead Cottage, the ditch becomes broader and deeper. A field boundary which ran along the south side of the ditch also continued in use into the early years of this century.
- h. The ditch spreads out around the boundary of the garden of Ladymead Cottage next to Ladymead Lane. This triangular area, known as Splot Paddock in 1840, was apparently created out of the waste ground lying between the fork into Ladymead Lane and Duck Lane.

POSSIBLE IRON-AGE ENCLOSURE (SMR 401, Grade II) and SITE OF WINDMILL (SMR 402) The roughly oval earthwork (about 50 metres maximum diameter) which is clearly visible on aerial photographs towards the western brow of Windmill Hill is suspected to be an iron-age enclosure. Examination on the ground has identified an inner bank and outer ditch, with two opposed entrances on the north-south axis. It is centred about 60 metres from the northern edge of the hill, and its eastern rim is cut by the double-fenced hedge (Hedge 11) which marks the western boundary of Park Farm, suggesting that the older earthwork was still a visible landmark (perhaps even in use) at the time when this boundary was laid out. The remains of a robbed wall that can be traced along the outer (west) side of the hedge may be associated with the medieval park boundary wall which it meets at the southern brow of the hill.

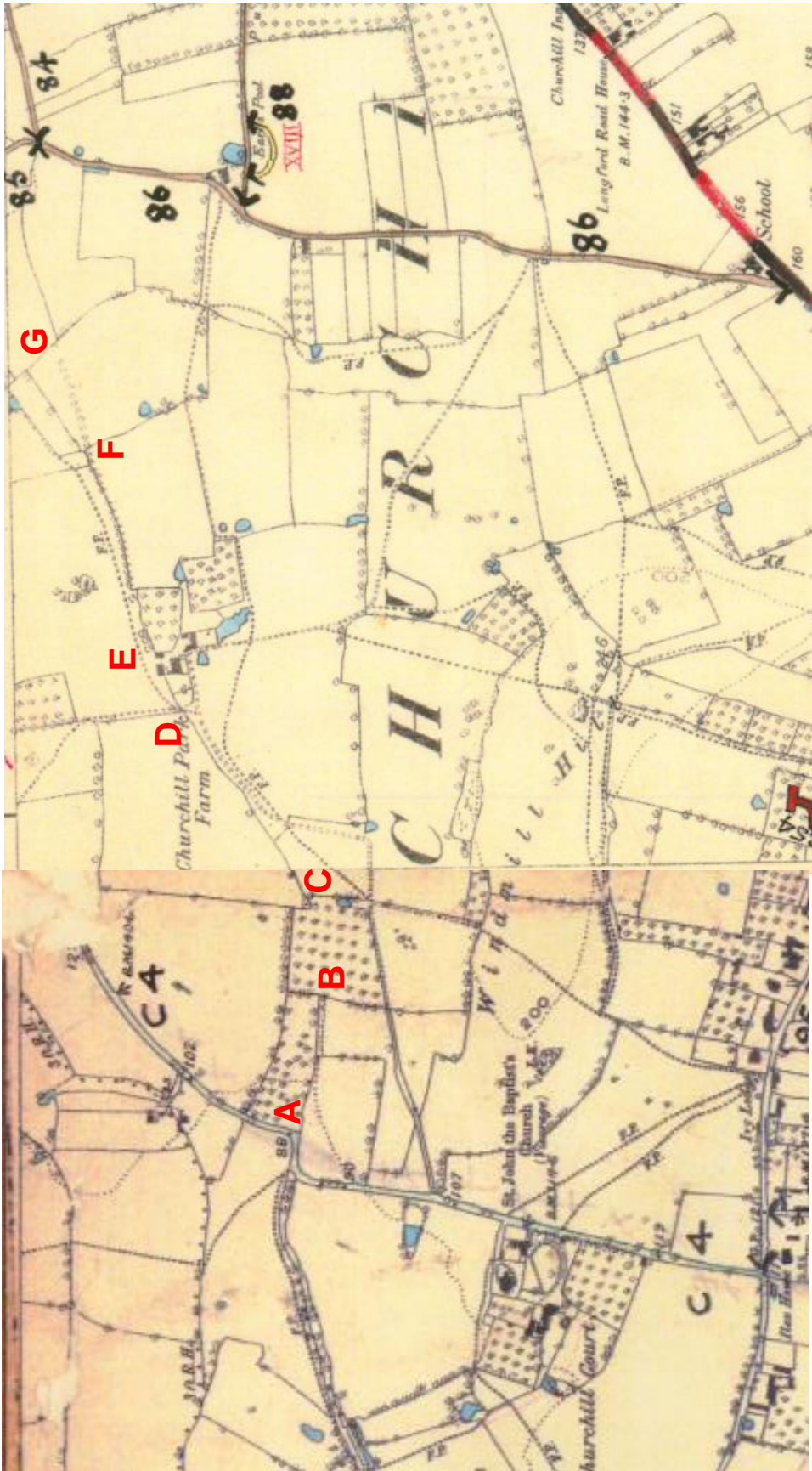
Windmill Hill apparently obtained its name from the windmill which is recorded in Churchill manor in 1652, the exact position of which has not yet been identified. Although a site near the summit has been suggested, the old ringwork remains a strong possibility (perhaps adapted for secondary use as a windmill enclosure). Prehistoric mounds and earthwork enclosures on high ground frequently provided convenient sites for such purposes. Seventeenth century windmills were still of the post mill type, which need not have left any mound or other superficial traces of its existence. Waterpower is scarce in the immediate neighbourhood of Churchill, and it is therefore not impossible that there was a windmill here as early as the late 13th or early 14th century when they were first introduced into this part of the country.

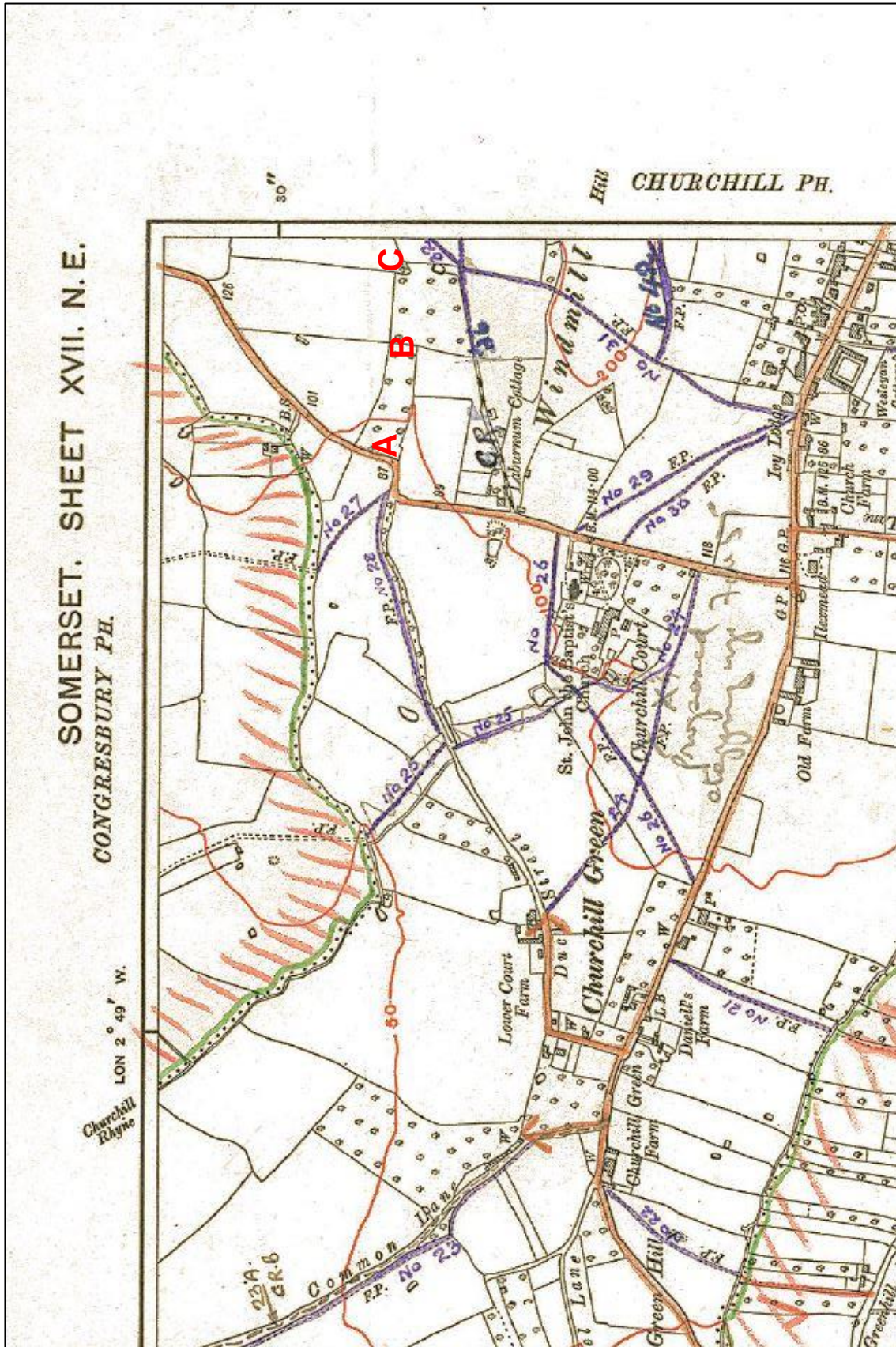
DOCUMENT 3  
CHURCHILL TITHE MAP 1840





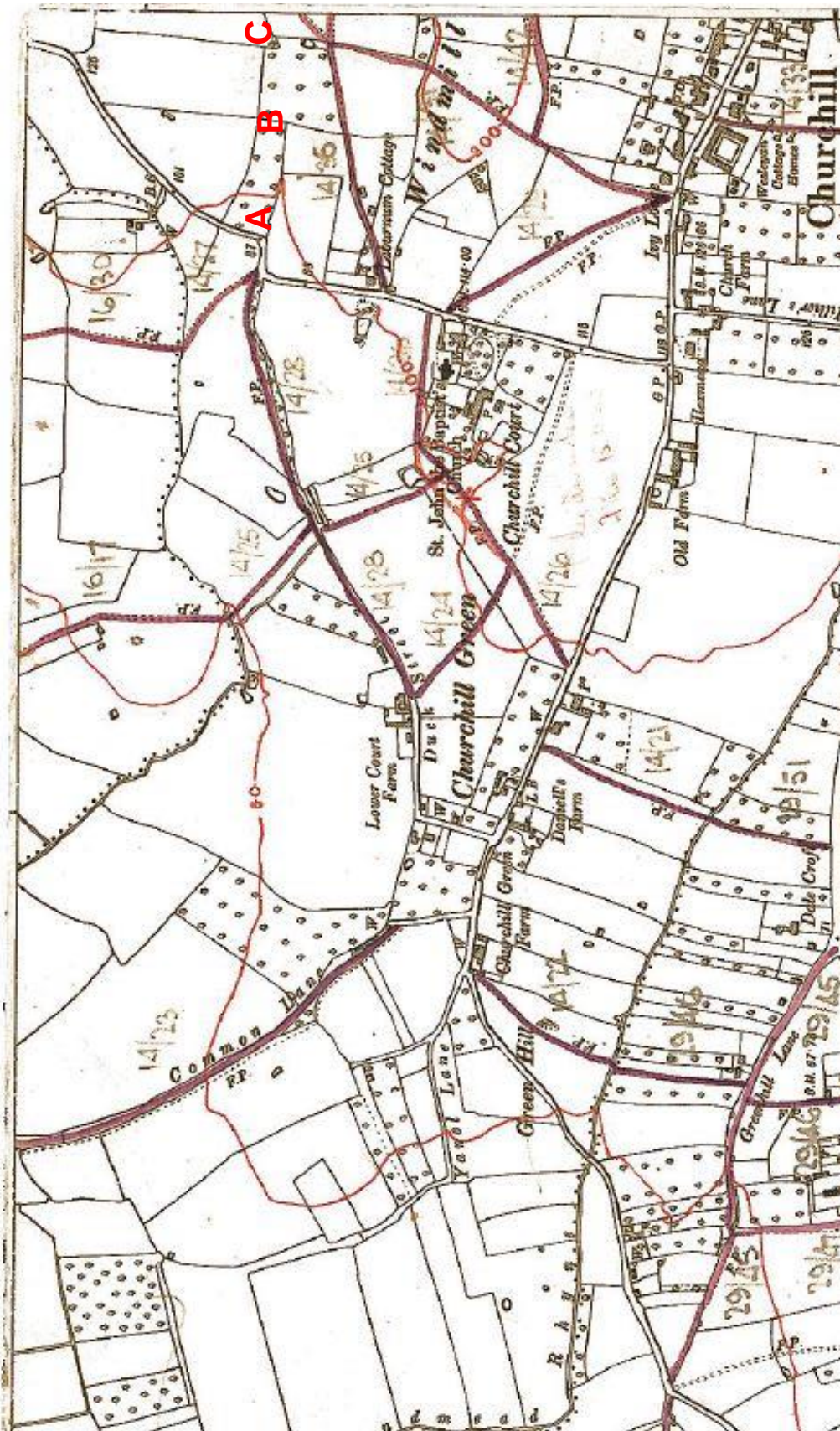
DOCUMENT 5  
HANDOVER MAP 1930

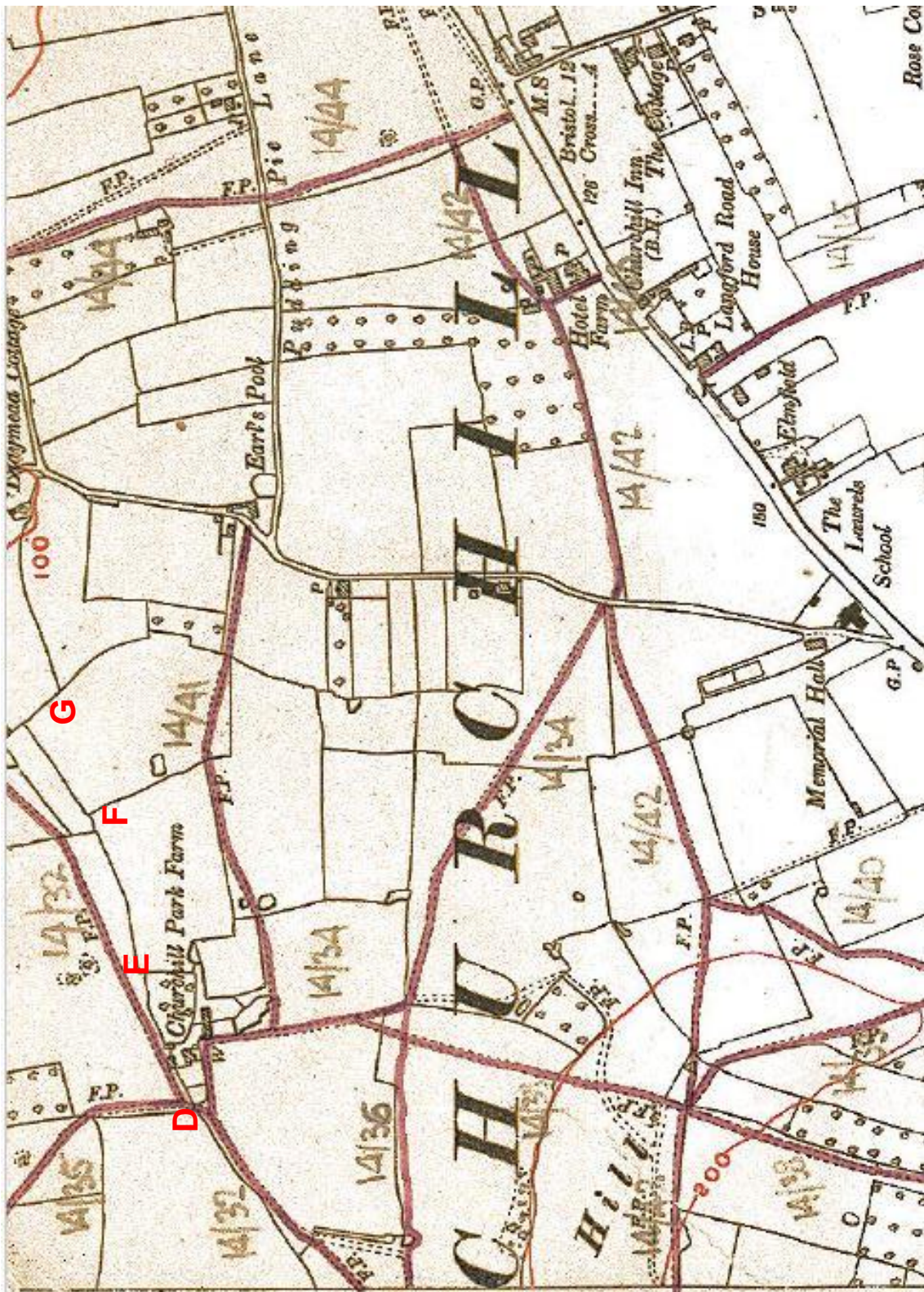




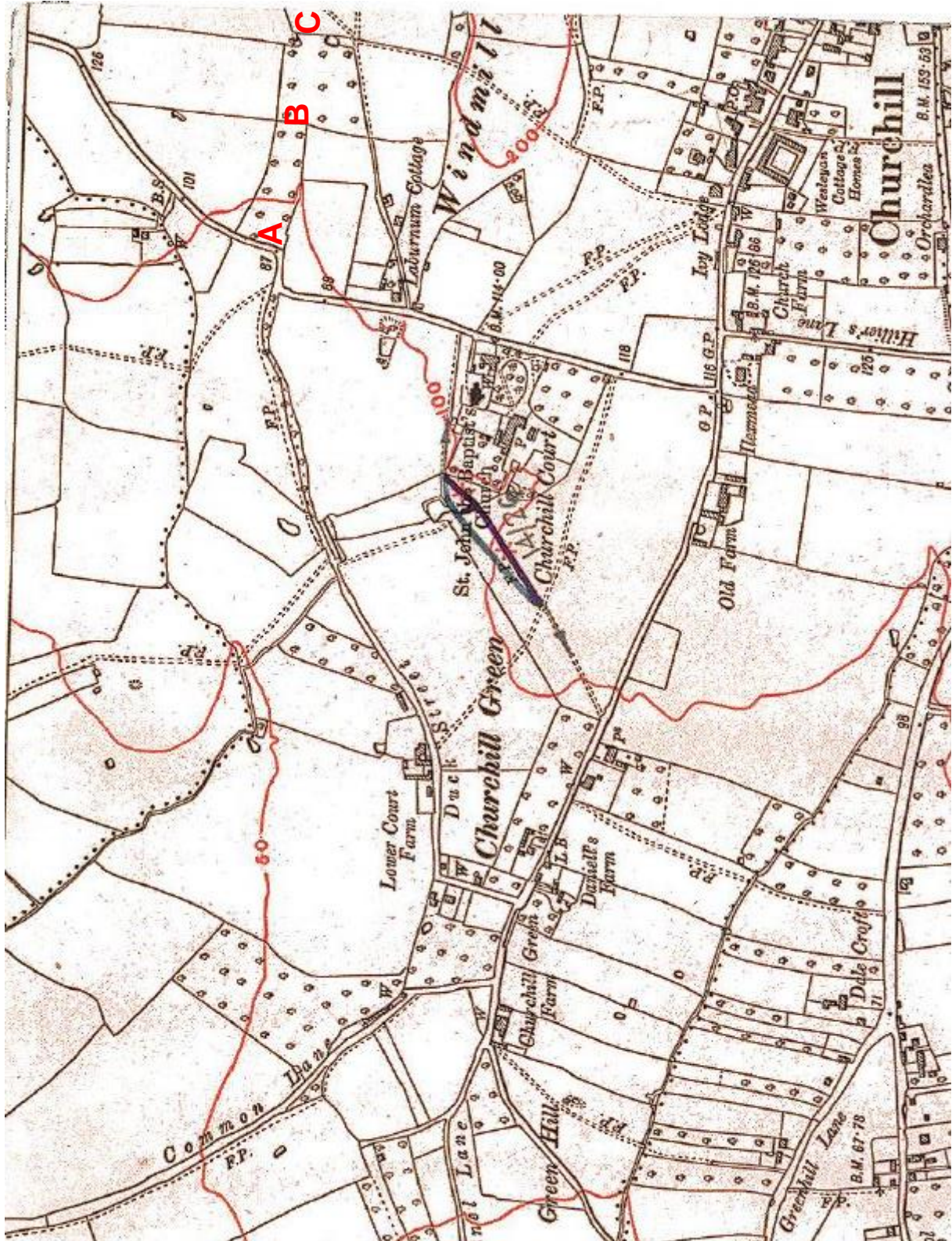


DOCUMENT 7a  
DEFINITIVE MAP PROCESS - DRAFT MAP

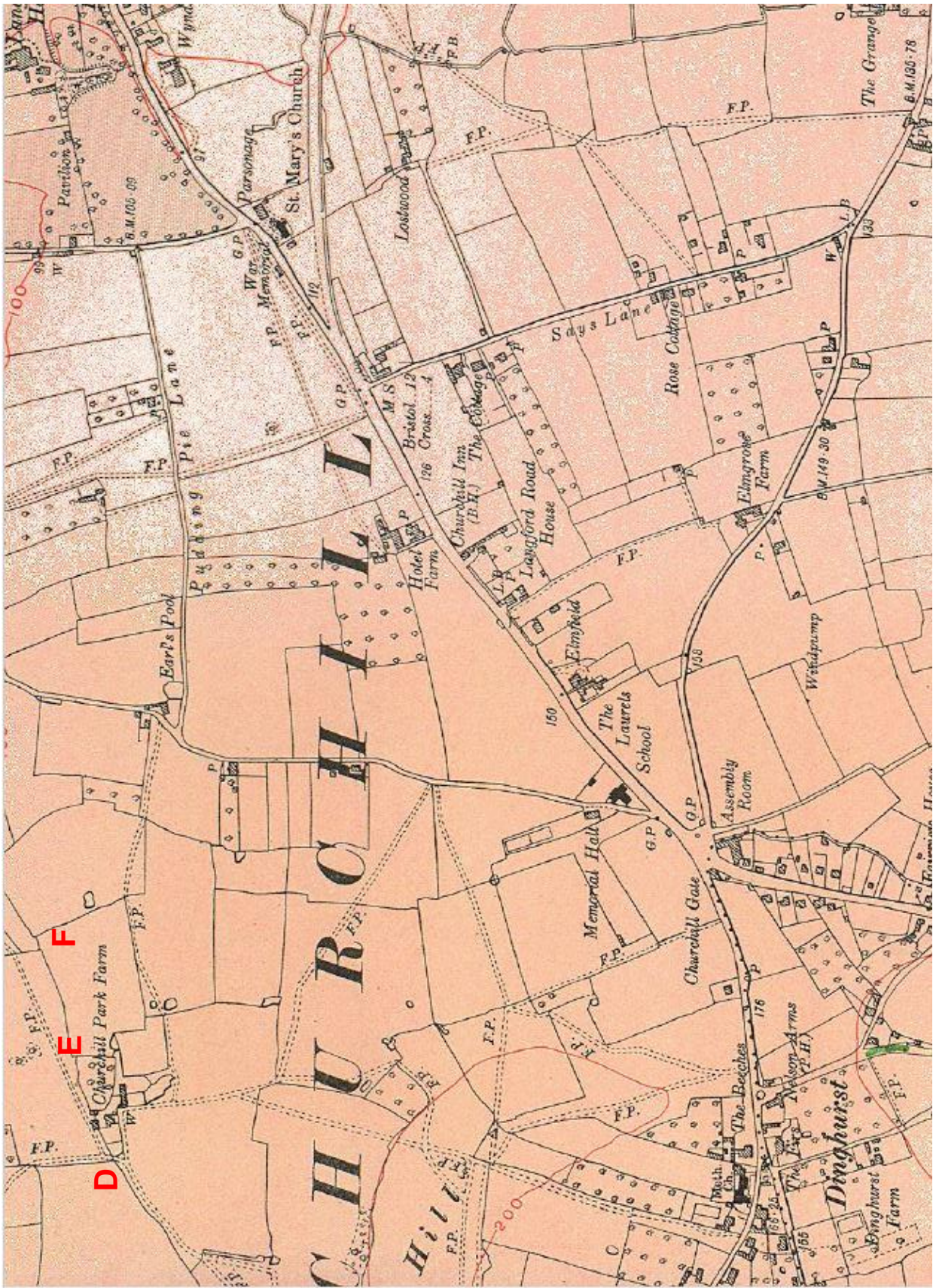




DOCUMENT 8a  
DEFINITIVE MAP PROCESS – DRAFT MODIFICATION MAP



DOCUMENT 8b  
DEFINITIVE MAP PROCESS – DRAFT MODIFICATION MAP







DOCUMENT 10  
DEFINITIVE MAP 1956

