

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 21 NOVEMBER 2018

SUBJECT OF REPORT: MOD 58 MOOR LANE TO WATERLOO FARM

TOWN OR PARISH: BANWELL

OFFICER/MEMBER PRESENTING: 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 make a Definitive Map Modification Order upgrading Footpath AX3/45 (A-B) to Bridleway on the grounds that there is sufficient evidence to show that Bridleway rights should be recorded on the Definitive Map;
- (ii) the Public Rights of Way Sub Committee authorise the relevant Officer to make a Definitive Map Modification Order upgrading part of Footpath AX3/29 (F-G) to Bridleway on the grounds that there is sufficient evidence to show that Bridleway rights should be recorded on the Definitive Map; and
- (iii) the Public Rights of Way Sub Committee authorise the relevant Officer to make a Definitive Map Modification Order to add the route G-H to the Definitive Map on the grounds that there is sufficient evidence to show that Bridleway rights should be recorded on the Definitive Map; and
- (iv) the Public Rights of Way Sub Committee authorise the relevant Officer to make a Definitive Map Modification order to add the route J-I-H-C-E-D to the Definitive Map on the grounds that there is sufficient evidence to show that Bridleway rights should be recorded on the Definitive map; and
- (v) the Public Rights of Way Sub Committee authorise the relevant Officer to reject the section of this application relating to the claim that C-D should be recorded on the Definitive Map as there is insufficient evidence to support this claim; and
- (v) if no objections are made and sustained, that authorisation be given for the confirmation of these Orders; and
- (vi) that if objections are made, that the Orders will be forwarded to the Secretary of State for determination. If this happens, subject to officers being content that there was no significant change to the balance of evidence, the Council will support the Orders at any subsequent Public Inquiry.

1. SUMMARY OF REPORT

This report considers an application which was made on the 4 November 2004. That application requested that many routes, in the Parish of Banwell, should be recorded as Byways Open to all Traffic. Two of these routes (A-B) Footpath AX3/45 and (F-G) Footpath AX 3/29 are currently recorded on the Definitive Map. The remaining sections being claimed are unrecorded routes.

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.

This report is based on historical documentary evidence. A plan, EB/MOD58, showing the claimed routes, A-B, J-I, I-H-C-E-D, C-D, and F-G-H is attached.

In order that members may consider the evidence relating to this application, further details about the claim itself, the basis of the application, and an analysis of the evidence are included in the Appendices to this report, listed below. Also listed below are the Documents that are attached to this report. Members are 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 58

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 – Map of route A-B, EB/MOD 58

Document 2 – Map of route J-I, EB/MOD 58

Document 3 – Map of route I-H-C-E-D, EB/MOD 58

Document 4 – Map of route C-D, EB/MOD 58

Document 5 – Map of route F-G-H, EB/MOD58

Document 6 – Banwell Enclosure Award 1797

Document 7 – Map of Banwell Roads, Watercourses and Houses 1815

Document 8 – Cary's Improved Map of England 1832

Document 9 - Greenwood Map of North Somerset 1822

Document 10a and 10b – Ordnance Survey Map 1884

Document 11a and 11b – Ordnance Survey Map 1904

Document 12 – Bartholomew Road Map 1904

Document 13 – Bartholomew Road Map 1922

Document 14 – Banwell Enclosure Award 1797

Document 15 – Banwell Tithe Map 1840

Document 16 – Finance Act 1910

Document 17 – Handover Map 1930

Document 18 – Walking card for Footpath AX 3/45

Document 19 – Draft Map

Document 20 – Draft Modification Map

Document 21 – Draft Map Survey Objections

Document 22 – Provisional Definitive Map

Document 23 – 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 routes, A-B and F-G, which are currently recorded on the Definitive Map as Footpath AX 3/45 (A-B) and Footpath AX 3/29 (F-G) and the remainder which are not currently recorded on the Definitive Map (J-I-H-C-E-D, C-D, and G-H), 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 sections recorded as Footpaths AX 3/45 and AX 3/29 is whether, given the evidence available, that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;

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

4. CONSULTATION

Although North Somerset Council is not required to carry out consultations at this stage affected landowners have been contacted. In addition to this Banwell 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.

6. RISK MANAGEMENT

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. Due to the number of outstanding applications awaiting determination Officers of North Somerset Council, in conjunction with the Public 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 streamlined 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.

7. 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.

8. CORPORATE IMPLICATIONS

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

9. OPTIONS CONSIDERED

The options that need to be considered are:

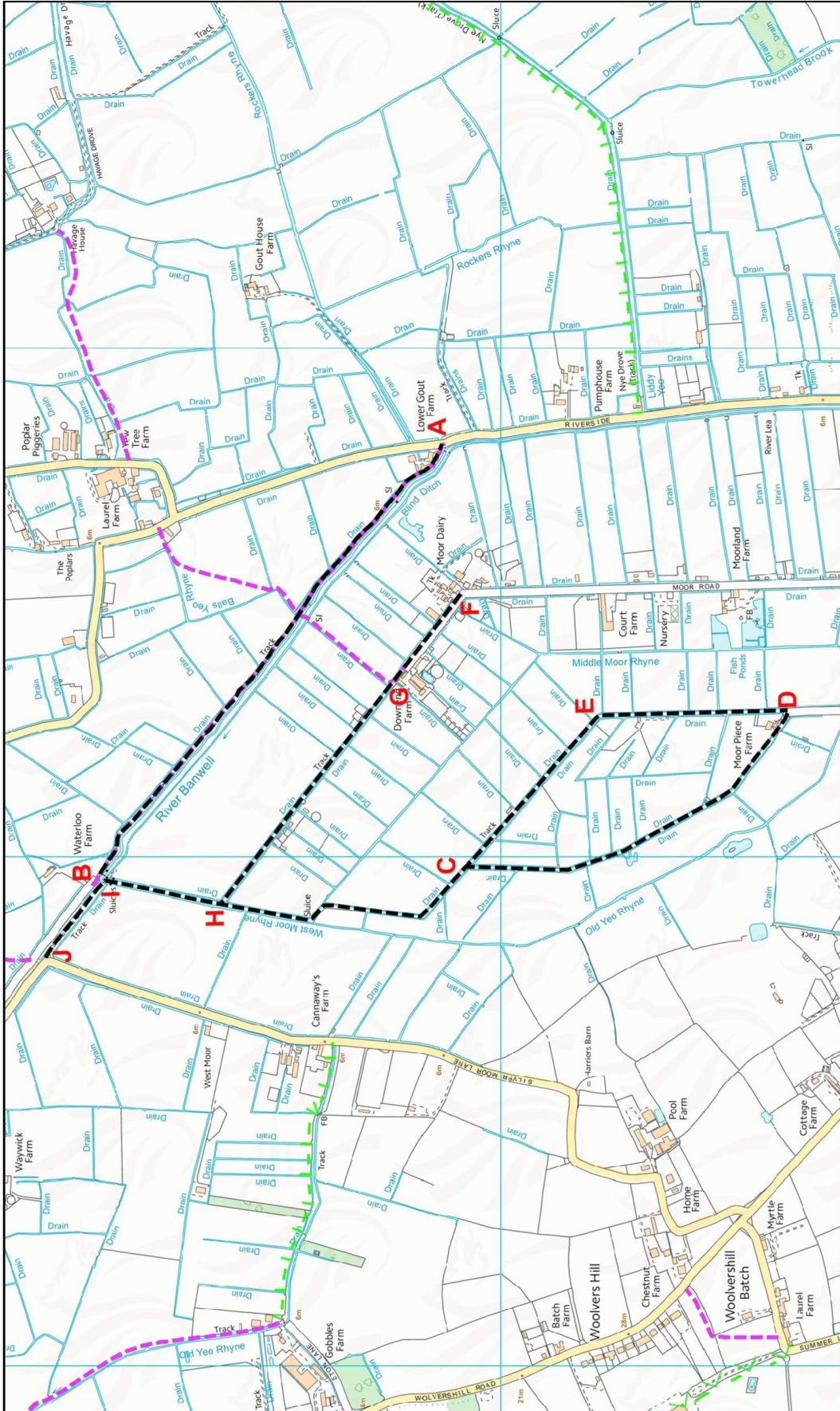
1. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade the route A-B Footpath AX3/45 to either Byway Open to All Traffic, Restricted Byway or Bridleway.
2. Whether the evidence supports the making of a Definitive Map Modification Order to upgrade the route F-G Footpath AX3/29 to either Byway Open to all Traffic, Restricted Byway or Bridleway.
3. Whether the evidence supports the making of a Definitive Map Modification Order to add the routes G-H, D-C and D-E-C-H-I-J as either Byways Open to all Traffic, Restricted Byways or Bridleways.
4. Whether the application to upgrade all the routes mentioned above should be denied as there is insufficient evidence to support the making of these Orders.

AUTHOR

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BACKGROUND PAPERS

Public Rights of Way File Mod 58



EB/MOD 58
Waterloo Farm - Banwell Moor



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

Scale: 1:10000
Drawn by: Lucy Roca
Date: 13 August 2018
Time: 15:42:04



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) 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 was that several routes in an area to be known as Waterloo Farm should be recorded as Byways open to all Traffic. Submitted with the application were documents which the applicant felt relevant, the details of the landowners notified of the claim and a list of documentary evidence that they considered to be relevant.

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

1815 Banwell and Churchill Enclosure Award and Extracts.
 1822 Greenwood Map of Somerset
 All Ordnance Survey Maps up to date.

Further Evidence was submitted on 4th April 2018 by the applicant, of which they have referred to:

1815 Map of Banwell’s Roads, Watercourses, and Houses signed by Alfred Bennett.
 1832 Cary’s Improved Map of England, Half and inch to the mile.
 1884 Ordnance Survey Map, Six inches to the mile.
 1904 Ordnance Survey Map, Six inches to the mile.
 1904 Bartholomew Half an inch to the mile Road Map.
 1922 Bartholomew Half and inch to the mile Road Map.

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

This matter is currently recorded on the Definitive Map Register as Mod 58.

It should be noted that the Council has undertaken additional research into primary records that are held within the Council as well as those obtained from external sources. These are detailed in **Appendix 4** of this report.

2. The 2004 application claims that Byways open to all Traffic should be recorded over two routes that are currently recorded on the Definitive Map as well as adding new routes. The paths that are currently recorded on the Definitive Map and Statement which are affected by this report are Public Footpath AX3/45 (A-B) and Footpath AX3/29 (F-G). The claimed routes affect routes in the Parish of Banwell.
3. The first route being claimed commences at the end of the adopted highway on Riverside Point A and proceeds along Footpath AX3/45 alongside the River Banwell in a north westerly direction for approximately 1123.55 metres to point B, located at Waterloo Farm its junction with the adopted Class 4 unclassified road.
4. The second route commences from the junction of adopted highway known as Silver Moor Lane, Point J and proceeds in a south-easterly direction for approximately 193.67 metres to Point I.
5. The third route being claimed commences at point I and proceeds in a southward direction for approximately 229.38 metres to a junction labelled point H. This route then continues south for a further 178.40 metres, a slight dog leg in a south-easterly

direction for 39.55 metres, continues south for a further 191.16 metres, then south-easterly for 132.50 metres to point C. The route then continues in a south-easterly direction for 394.88 metres to Point E, where it then proceeds in a southerly direction for 383.23 metres to Point D, its junction with the lane off Moor Road a Class 4 unclassified road. Therefore, making the full length of this route approximately 1549.10 metres.

6. The fourth route being claimed commences from point F its junction with Moor Road a Class 4 unclassified road, and proceeds along Footpath AX 3/29 in a north-westerly direction for 220.98 metres to Point G. Then continuing in a north-westerly direction for 551.30 metres to Point H. The full length of this route is approximately 772.28 metres.
7. The fifth route being claimed commences at the junction from point C, proceeding in a southerly direction for 201.83 metres, then south south-easterly direction for 357.70 metres and south-easterly direction for 200.13 metres to Point D, its junction with the lane off Moor Road a Class 4 unclassified road. Therefore, making the full length of this route 759.66 metres.
8. These claimed Byways open to all Traffic are illustrated as bold black dashed line on the attached Location Plan (scale 1:10000) and for clarity A-B is illustrated on **Document 1** (scale 1:10000), J – I is illustrated on **Document 2** (scale 1:10000), I-H-C-E-D is illustrated on **Document 3** (scale 1:10000), C-D is illustrated on **Document 4** (scale 1:10000) and F-G-H is illustrated on **Document 5** (Scale 1:10000).

Analysis of Applicants Evidence

The claim is based on documentary evidence suggested by the applicant. These routes are illustrated on the Location Map EB/MOD58, the same numbering has been imposed on the following extracts for completeness. (Scale 1:10000).

Plan of Banwell Waste Lands and Enclosure Award (1797) Somerset Record Office Ref: Q/RDE/42

This plan was drawn up to illustrate the waste lands of the North and West of Banwell village in the County of Somerset enclosed by virtue of an act of parliament. The plans were drawn by surveyor, William White in the year 1797.

The route A-B appears to be illustrated as a through route although the map has cut off the continuation from B, however does not appear to give any indication of destination description. This would appear to be a route outside of the area the subject of the Enclosure Award, this may have been a pre-existing route.

The route I-H-C-E-D (Lettered N-M-T-S-R-V-Q-P and titled Middle Drove) is also shown in a similar manner as other through routes in the area. There is no indication of barriers or obstructions.

The route C-D (Lettered V-U-P and titled West Drove) is also shown in a similar manner as other through routes in the area. There is no indication of barriers or obstructions.

The route F-G-H (Lettered L-M and titled Banwell Moor Drove) is also shown in a similar manner as other through routes in the area. There is no indication of barriers or obstructions. It should be noted that the section I to H is included in the description of Banwell Moor Drove (Lettered M-N). The section J – I seems to be outside of the area of interest in the Enclosure Award.

All of these routes appear to have been capable of being used, certainly providing access to adjoining fields and described within the Enclosure Award, this is included in the additional evidence undertaken by North Somerset Council (**Appendix 4**).

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

A Map of Banwell's Roads, Watercourses and Houses (1815)

This map illustrates all of the claimed routes A-B, J-I-H-C-E-D, C-D, and F-G-H. It is believed that Yellow/Brown is for roads, Blue/Green is for Watercourses, and red is to indicate "The Division of the Marsh from the Upland". All the claimed routes appear to be coloured yellow/brown similar to other routes in the area some of which are adopted highways today. It should be noted that routes leading to properties are also marked.

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

Cary's Improved Map of England Half an inch to a mile (1832)

The applicant has referred to this document which they believe denote road networks across the District of North Somerset District. Although the map includes the region of the claimed route, the only section of the claimed routes which could be illustrated is that of the

claimed route A-B. This route has been coloured brown. No key has been provided to determine whether this colouring is highlighting routes which could be used by the travelling public. This could be outlining Parish Regions.

An extract of this plan is attached as **Document 8**.

Greenwood Map of Somerset (1822) North Somerset Council

The applicant has referred to this document in correspondence with Woodspring District Council. This map illustrates all the claimed routes A-B, J-I-H-C-E-D, C-D, and F-G-H similar to that shown on earlier maps. Visually the route is depicted in a similar manner to other existing highways. However, its depiction on this plan does not provide evidence of its status only that a through route appears to have existed on the ground.

An extract of this plan is attached as **Document 9**.

Ordnance Survey Map (1884)

The location of these claims falls on two separate tiles of the 1884 map. Tile 1 illustrates part of the route A-B and part of the route F-G (The applicant has made reference to point F as E). Tile 2 covers the remainder of the route A-B, also the remainder of the route G-H, and parts of the route I-H-C (The applicant has placed C in a different location). The remaining sections C-E-D and C-D have not been provided. Visually the routes that are depicted are shown in a similar manner to other existing highways. However, their depiction on this plan does not provide evidence of its status only that through routes appear to exist on the ground.

Extracts of both map tiles are attached as **Documents 10a and 10b**.

Ordnance Survey Map (1904)

The Applicant has also referred to this OS Map dated 1904, of which the applicant has supplied two tiles. As detailed above, the depiction on these plans is the same.

Copies of these maps are attached as **Documents 11a and 11b**

Bartholomew Half an inch to a mile Road Map (1904)

The Applicant has referred to this additional document in correspondence relating to this application, whereby the map demonstrates the claimed route A-B as a red dashed line. A distinction seems to be drawn between major routes which are shown as solid red lines and minor routes as red dashed lines. However, although the route is depicted on the ground, it does not assist with its status.

An extract of this plan is attached as **Document 12**.

Bartholomew Half an inch to the mile Road Map (1922)

The Applicant has also referred to this additional document. This plan illustrates all the claimed routes; however, it should be noted that the claimed route A-B is now shown with red dots rather than red dashes. Unfortunately, a key to these depictions has not been given so it is not possible to verify the meaning of this change. The remaining claimed routes are uncoloured implying that these were not considered to be routes of similar status to those coloured. However, although the route is depicted on the ground, it does not assist with its status. An extract of this plan is attached in **Document 13**.

Analysis of the Documentary Evidence

This claim is based solely on documentary evidence. North Somerset Council have undertaken additional research from documents held. These routes are illustrated on the plans attached, Location Map MOD 58 for completeness however additional plans, Plan 1 (**Document 1**) showing the route A-B, Plan 2 (**Document 2**) showing the route I-J, Plan 3 (**Document 3**) showing the route I-H-C-E-D, Plan 4 (**Document 4**) showing the route C-D and Plan 5 (**Document 5**) showing the route F-G-H are attached to identify the five claimed routes.

Banwell Local Act 1795

This local act laid out the powers given to the appointed Commissioners for enacting their Enclosure Award. This provides information relating to the setting out of Public Roads, Private Roads, Bridleways, ditches and other conveniences.

The first exert mentioned here relates to the setting out of Public Roads.

And be it further enacted that the said commissioners or any two of them shall and they are hereby authorised and required to set out and appoint such public carriage roads in over and upon the said commons or waste lands hereby intended to be divided and inclosed as they shall think necessary and proper all which public roads shall be and remain of the breadth of forty feet at the least (which said 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 and used in over and through the said commons or 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 and that it shall not be lawful for any person to erect any gate across any of the said public roads or to plant any trees 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 impowered and required by writing under their hands to appoint some proper person to be surveyor of the roads and such surveyor shall cause the same to be formed and put in good and sufficient repair

The next exert relates to the setting out of Private Roads and pre-existing routes which were not set out ceasing to exist.

and the said commissioners or any two of them shall and they are hereby also impowered and required to set out and appoint and cause to be made erected and completed such public bridle roads and foot ways and private roads and ways and also such banks ditches drains watercourses bridges stiles and other conveniences in over upon and leading to the said commons or waste lands hereby intended to be divided and inclosed as they shall think requisite and the same shall be made and created and at all times hereinafter 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 road or ways either public or private over or upon the said commons or waste lands and that all former roads or ways which shall not be set out and appointed as the roads and ways through or over the said commons or waste lands shall be deemed to be part of the commons or waste lands hereby intended to be divided and inclosed

Banwell Enclosure Award (1797) North Somerset Council

The Banwell Enclosure Award was produced by Francis Whalley, John Plaister and John Smithfield in 1797. The detail of the meetings that they called and their actions are described in the Award. The award provides the following information.

And whereas we the said Commissioners after laying out and appointing the several Bridle roads and footways and private roads and ways no public carriage road being by us necessary and also the several banks ditches drains watercourses bridges stiles and other conveniences in over upon and leading to the said Commons or Wastelands according to the purposes and directions of the said act have agreed upon such orders regulations and determinations as appeared to us requisite and proper conformable to the time intent and purpose of the said act of parliament

In addition to the Enclosure Plan presented by the applicant, the following exerts are included which fully describe the routes illustrated on the location plan.

Banwell Moor Drove:

“One private road or drove way in the said Moor of twenty four feet wide beginning at the Bridge near the south end of the said moor marked on the said plan with the Italic letter I and extending from thence north westward to a certain place in the said moor marked on the same plan with the italic letter J from thence northward and north westward to a certain other place marked on the same plan with the italic letter K and extending from thence northwards to a place thence marked on the same plan with the Italic Letter L and extending from thence north westward to a certain other place there marked on the same plan with the italic letter M and extending from thence northwards to a certain other place there called Moor Drove and marked on the said plan with the Italic letter N which said private road or drove way is particularly delineated in the same plan and thereon described by the name of Banwell Moor Drove”

Middle Drove:

“One other private road or drove way in the said moor of twenty four feet wide beginning at a certain part of Banwell Moor aforesaid marked on the said Banwell plan with the italic letter K and extending from thence westward to a certain other place there marked on the said plan with the italic letter O and extending from thence northwards to a certain other place there marked on the same plan with the italic letter Q and extending from thence north westward to a certain other place there marked on the same plan with the italic letter R and from thence northward to a certain other place there marked on the same plan with the italic letter S and from thence north westward to a certain other place there marked on the same plan with the italic letter T and from thence northward to a certain place in Banwell Moor aforesaid marked on the same plan with the italic letter M which said private road or drove way is particularly delineated in the same plan thereon described by the name Middle Drove.”

West Drove:

“One other private road or drove way in the said Moor of twenty feet wide beginning at a certain part of Middle Drove aforesaid marked on the said Banwell Plan with the italic letter P and extending westward and north westward to a certain other place there marked on the same plan with the italic letter U and extending from thence northward to a certain place in Middle Drove aforesaid marked on the same plan with the italic letter V which said private road or drove way is particularly delineated in the same plan and thereon described by the name West Drove.”

These descriptions are applicable to F-G-H-I-J, D-E-C-H and D-C. These are described as Private Roads. The route A-B is not described at all within the Award but is illustrated upon the Award Plan as a route proceeding off the route now known as Riverside suggesting that this was a pre- enclosure route which was not subject to the enclosures on the moors. What status that route was is unknown. An extract of this Award is attached as **Document 14**.

Banwell Tithe Map (1838)

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 Tithe map of Banwell Parish was illustrated by J. Marmont of Bristol produced in the year 1838. The purpose of this document was not to identify status only land which can produce a crop and thereby providing income from taxation.

All the claimed routes are shown as through routes like other maps and plans previously discussed. This plan assists with illustrating the existence of these routes but does not assist with establishing their status.

Two extracts of this plan are attached at **Documents 15a and 15b**

Finance Act (1910) Somerset Record Office Ref: DD/IR/W/17/2-3

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 either the plans or the hereditaments relating to this area from the offices at Kew at this time.

This area of land is illustrated on four separate plans, we have attempted to merge these four plans into one relating to the area of the claim. This merged plan shows all of the claimed routes excluded from the adjacent parcels of land. From the information that is available, the routes are illustrated as through routes. These would have provided access for the field owners being consistent with the descriptions contained within the Enclosure Award. As these routes were through routes they may have been capable of being used by the public, however status cannot be attained from these documents.

A copy of the merged plan is attached in **Document 16**

Handover Map of Banwell (1930)

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 considered to be public highways maintained by the local authority. As can be seen routes are coloured according to their differing category, Red being main routes, blue being secondary routes and yellow minor highways. This area of land is illustrated on four separate plans, we have attempted

to merge these four plans into one relating to the area of the claim. This merged plan shows all of the claimed routes excluded from the adjacent parcels of land.

Route I-H-C-D is indicated with a purple dashed line. This plan is annotated at the bottom stating that certified non-county roads are shown with a purple broken line.

Point B to its junction with Silver Moor Lane is illustrated coloured yellow with the number 122 above it. Yellow represents a Class 4 Unclassified Road.

Leading up to Point D, similar yellow colouring entitled Lane off Moor Road also a Class 4 Unclassified Road and numbered 114.

Point A sits at the junction of the claimed route A-B and Riverside Road. Riverside Road is coloured Blue which represents a C Class highway.

Leading up to Point F, the route is also coloured yellow numbered 114, is known as Moor Road a Class 4 Unclassified Road.

All the routes A-B, J-I, I-H-C-E-D, C-D, and F-G-H are routes which allowed access to the adjoining fields. There is no indication of any obstructions across these routes which would have stopped these being used by the public. The continuations of all of these routes are adopted highways, maintained by the authority capable of being used.

This merged plan is attached as **Document 17**

Banwell Definitive Map Process (1956)

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.

These Maps relate to the area of Banwell Moor and illustrate the Public Rights of Way recorded by the parish councils.

During the stages of the Definitive Map process a parish survey plan and walking card of existing public rights of way were produced. However, North Somerset Council does not hold a copy of the Parish Survey Plan for this area. The walking card for Footpath AX3/45 (B-A) reads "End of county Road by Waterloo Farm and runs in a south easterly direction to county road at Lower Gout House" This is written in pencil; the route status is marked as 'F.P' and the card has not been signed or dated.

The walking card for Footpath AX 3/29 (F-G) reads "From White Rails to Banwell Moor Drove near Moor Cottage Stile & FB". Also marked on this card in purple pencil is written "See No 2A on Parish Card at beginning". That then states "FP2 Banwell Moor Drove is not a county road. Please show access to county road"

The extracts of these walking cards are attached as **Document 18**.

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 the Draft map, only Footpath AX 3/29 is depicted crossing the route A-B in a south-westerly direction to Point G whereby it terminates at Point F. It should be noted that the route A-B has AX4 written in three locations along this route and the route appears to be coloured in.

A copy of the Draft Map plan is attached as **Document 19a & 19b**.

Following publication of the Draft Map comment and objections were submitted to Somerset County Council. In this case there is an entry on the objection sheet relating to the route A-B. This shows that The Ramblers Association made representation "requested that the omission of path from south end of 3.35 south easterly via Waterloo Farm to County Road at lower Gout House. Somerset notice that County Road as far as Waterloo Farm but not beyond. Determined that a footpath should be added "From end of county road by Waterloo Farm to county road at Lower Gout House, 3/45".

The Draft Modification Map illustrates the included Footpath AX 3/45 running from point A to B. This indicates that having assessed the request of the Ramblers Association that an amendment was made to the Mapping.

A copy of the Draft Map Modification Plan and objection are attached as **Documents 20, 21a and 21b**.

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. The paperwork which is held by North Somerset does not show that any objection was made to the inclusion of the additional footpath mentioned above or those previously recorded. Unfortunately, we have only been able to obtain part of the provisional mapping relative to this area from Somerset County Council. The plan they hold only illustrates the section of route claimed between points D and E whereby there aren't any indication of public rights of way and the routes in the surrounding area are illustrated as enclosed at both sides.

A copy of this map is attached as **Document 22**

The Definitive Map shows route A-B illustrated as Footpath AX 3/45 and is shown to have a rhyme on one side. Additionally, route A-B's footpath is crossed by another Footpath, AX 3/29 as described above. All the claimed routes, A-B, C-D, J-I-H-C-E-D, C-D and F-G-H are shown as through routes capable of being used.

An extract of this map is attached as **Document 23**.

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 lettering on the plan supplied with the consultation is that referred to below, not the location plan attached to this report. Please note that reference made to point G below is in fact point H.

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

Name	Objection or Supporter	Comments
Wales & West Utilities	Information	Our records show those pipes owned by Wales and West Utilities in its role as a Licensed Gas Transporter (GT). Service Pipes, valves, syphons, stub connections, etc. may not be shown but their presence should be anticipated. No warranties are therefore given in respect of it. They also provide indications of gas pipes owned by other GT, or otherwise privately owned, which may be present in this area. This information is not information of WWU and WWU is unable to verify this information or to confirm whether it is accurate or complete.
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 and F to G, will be in our easement strip which extends 3 metres for the 16" ci and 1.5 metres for the 3" pvc main either side of the pipeline and within which any proposed construction works would be strictly regulated. We shall also require vehicular access along the length of the pipeline at all times and therefore your proposals should take this into account. You should ensure that no reduction in cover or increases in ground levels, more than 200mm over our pipeline, take place. We confirm that we have no objection to the proposed stopping up order of footpath A to B and F to G so long as the above requirements are adhered to.
Akins Global	No Objection	Please accept this email as confirmation that Vodafone: Fixed does not have apparatus within the vicinity of your proposed works detailed below.
H Eke – Email dated 11/4/2018	Support for Bridleway	Regarding the tracks from Moor Rd. I keep my horse in our field on moor rd and frequently use the tracks weather permitting to safely ride several circular routes. I have been using them for over 40 years from childhood to ride horses and walk through. My children now late teens also use them. Over time it has been disappointing that some of the land owners at the ends have blocked some route and made them impossible to use. It would be awful to lose such a safe and useful connection and passage surrounding our beautiful area for us and our future generations.
Mr & Mrs Whitfield	Support for Bridleway	I was very pleased to receive this. As a land owner that has access out onto these tracks. I have ridden horses and walked our dogs along all of these tracks for over 40 years and feel that it is

imperative that these are designated for bridleway and walkers for the future and prosperity of not only our generation for future generations and fully support it. My husband also used to walk track C to D on a regular basis 40 years ago to get to work at Henry Gwynns (Poole Farm) when he was milking before this track was blocked.

Mrs Baker	Support for Bridleway	I have ridden and walked these droves for the past 50 years, also my children and their children have regularly used the droves as horse riders and dog walkers, a safe and pleasant passageway away from traffic.
Mrs Ruby	Objection	I am writing in response to a meeting I attended on the 9 th April at Banwell Village Hall in reference to an old drove at Waterloo Farm and Moor Road Banwell in fact a network of droves in this area. I have a smallholding in Moor Road Banwell for 12 years and lived in Banwell for a good few years I would have very serious concerns for the two bow bridges (Pack horse bridges) one at Waterloo and the other at Moor Road if these droves were opened up to the public for through traffic. I am 62 years old and have used these droves for most of these years either riding walking or carriage driving or blackberry picking. Originally they were classed as droves and trups for farmers driving their cattle from Worle Kewstoke and Sandbay and Hewish areas to get their cattle/livestock to the market in Banwell and also for the local farmers and landowners to move their stock from field to field. They were never designed for mechanical vehicles or a public byway or footpath. These tracks have got into bad repair and some are unpassable at present and have been for 5 years or more the droves are nothing more than mud tracks, now only used in the summer as the overgrowth of tree and bramble has kept the ground sodden. Patches in dry season never dry out always very rutty and most sensible horse riders would not ride these as too uneven for safe passage. I personally haven't been able to ride for 5/6 years and have been carriage driving instead and would not dream of taking the carriage along them. Farming in this area has changed over the years and has gone from livestock to forage and grain therefore not had need to use of these droves most all the fields have been joined up in other ways. The only vehicle that has used a very small part of these droves are the rhynes and open drains company which are partly to blame for the ruts in the ground. I was on the understanding where people using these types of lanes they were to leave them in usable condition for other users.
Openreach	No Objection	Openreach does not appear to have plans in the area of your proposals that will be affected by this proposed Modification of the Definitive Map.
Mrs S Major	User Evidence	With reference to the above, I have used these droves since the early 80s until the present day.
Mr & Mrs Ford	Objection	Please register that we do not support the claiming of the droves on Banwell Moor as open to all traffic. We have had several occurrences of "Green Lane" off roaders using our land as a playground and damaging low lying waterlogged grounds. We do not wish the droves to be open to mechanically propelled vehicles. We have no objection to pedestrians, horse riders and cyclists using the droves. We do use the droves to access our adjoining land with agricultural machinery and often move our herd of suckler cows and calves on the tracks. Persons using the paths for recreation should be made aware that they may encounter livestock and agricultural vehicles. It is a working environment. We strongly object to a Byway Classification.

Mr & Mrs Swain	Objection	<p>I am against the opening sections D E C to all mechanically propelled vehicles pedestrians and horses. This narrow unadopted unmade up lane has historically only been used by adjacent landowners with agricultural tractors to make use of their land. See enclosed "Statutory declaration" by the previous owner. Over the years a few of the fields have been sold off with the increase of traffic unfortunately this has led to fly tipping if the track is further opened up as a byway open to all traffic we feel this will result in further fly tipping, increase in thefts sheep worrying and generally decrease in the security of my property. I understand from our telephone conversation that the council will not be responsible for the maintenance and upkeep of the track including removal of flytipping. The track is subject to flooding and there is no room for vehicles to pass each other. This track is a sanctuary for native wild animal otters badgers deer foxes etc. and abundant undisturbed bird life including owls. We would recommend installation of a gate by Moor Piece farm to increase security and prevent the use by motor cycles and rough terrain vehicles and night-time shooting. (The Statutory Declaration referred to is relative to fields between Points D and E and is held upon the file for Mod 59)</p>
G Plumbe – Green Lanes Protection Group	Objection	<p>I object to the proposed modification because any pre-existing public vehicular rights have been extinguished. My reasons are:</p> <p>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) 1. Award and Evidence On the Greenwood Map 1822 and all maps to Date OS" Signed ... Dated 4/11/04</p> <p>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.</p> <p>Validity of application - There is no information from NSC that any of the evidence relied on accompanied the application. May we ask to be told? For the purposes of an objection we are assuming that it was NOT so supplied, given that the onus is on the applicant to prove the exemption. If that proves to be correct, the application will not qualify for exemption from extinguishment under NERCA s67(3).</p>

The evidence that should have been supplied is:

1. Whatever is meant by "1. Award and Evidence". As this does not identify which Award or any "Evidence", it is not conceivable that this can satisfy the requirement to produce the evidence which the applicant wishes to adduce in support of the application.

2. A copy of the Greenwood Map 1822 covering the relevant area.

3. As "all maps to Date OS" does not identify which OS maps are being relied on, again it is not conceivable that this can satisfy the requirement to produce the evidence which the applicant wishes to adduce in support of the application.

In my submission this application does not qualify for exemption under s67(3).

G Plumbe – Green
Lanes Protection
Group

Objection (2)

Validity of Application – The evidence that should have accompanied the application is: 1. "1. Award and Evidence". 2. A copy of the Greenwood Map 1822 covering the relevant area. 3. A list of, and copies of "all [relevant] maps to date OS".

Evidence actually supplied – You kindly sent us copies of all the 'Applicants evidence'. They did not include anything relating either to Greenwood or to OS Maps. Any vehicular rights have therefore been extinguished as the claim does not qualify for exemption under s67(3).

Substance of evidence - In extension of the above point, I assume that what you have sent us is what was referred to as 'Award and evidence'. The application is dead but I will nonetheless consider the evidence as if the claim were live. It consisted of:

(i) A letter from 'Venetia' to Richard (NSC) concerning irrelevant matters.

(ii) A letter dated 22.1.96 from Woodspring B A to Mrs Fellowes - address redacted but presumably, from the wording of the letter, the Parish Council. Although reference is made to potentially relevant evidence, this letter is not in itself evidence.

(iii) A map of 'Banwell Waste Lands' which gives no information as to vehicular rights.

(iv) A typed transcript of part of the Banwell Inclosure Award 1775 referring to 12 droves or other roads. All are named as 'private' (Blackburrows Drove says 'said private road' in line 6). The transcript concludes with a truncated list of footpaths.

(v) A letter dated 29.10.96, addressee redacted but presumably to a farming representative to whom reference is made about 'your Parish Council and 'up dating the Banwell Map'. It seeks bridleway dedication and makes reference to Byways and 'Slumbering Higher rights' but provides no evidence to support such assumptions.

(vi) A repeat copy of (iv) above, but with the concluding list extended to name in various locations 'Private Ways or Passages', 'Private Ways', and 'Ways'.

There follows a missing passage which destroys knowledge of the context, and a concluding passage 'the several private roads or droveways hereinbefore particularly mentioned' ... for the benefit use and enjoyment of all and every the Owners Tenants and Occupiers' of the land parcels. The closing passage sets out contradictory wording widening the permitted users to include carts and carriages, but the meaning and relationship with the preceding wording is far from clear.

You have previously been supplied with a copy of the Joint Opinion by George Laurence QC and Ross Crail in Jan 2007 (I will send you another if wanted). That says at para 12:

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. For all these reasons you are asked to refuse the application.

D Mallinson – Green Lanes Protection Group Comments (1)

I would like to make the following comments on this application, in response to your letter of 26 March. This is an interim response, to which I may wish to add when you have been able to give me information about what documents, if any, the applicant supplied with their application.

1. The applicant, Woodspring Bridleways Association (WBA), listed the following items of documentary evidence in support of their application:

“1 Award and Evidence

On the Greenwood Map 1822 and all maps to Date OS”.

I assume that the award is the Banwell Inclosure Award of 1797. However it is not clear that the applicant provided this award with their application. They have not provided a list to specify what they mean by “Evidence” and “all Maps to date”. This lack of specificity strongly suggests that they did not provide Greenwood’s 1822 map or any other maps or evidence (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 routes 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 east from E, which is not on modern OS mapping 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.

D Mallinson – Green Lanes Protection Group Comments (2)

Many thanks for sending me the documents which Woodspring Bridleways Association (WBA) supplied with their application. This letter is my final response to your letter of 26 March, following my interim response of 4 June.

1. The applicant, Woodspring Bridleways Association (WBA), listed the following items of documentary evidence in support of their application:

“1 Award and Evidence

On the Greenwood Map 1822 and all maps to Date OS”.

The applicant has provided a copy of a plan from the Banwell Inclosure Award of 1797 and two transcripts of the section of the award headed “Private Roads and Drove Ways”. But they have not provided Greenwood’s 1822 map nor any Ordnance Survey maps (other than their application map) with their application, despite listing these as part of the documentary evidence they 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. WBA argue in their letters to the Parish Council of 22 January 1996 and 29 October 1996 (included with their application as covering letters to the transcripts of the inclosure award) that three of the droves on Banwell Moor are “ancient highways set out by the enclosure award” and that they have public vehicular rights. The route A-B (currently Footpath AX3/45) claimed by WBA appears on the inclosure award plan, but neither the plan nor the

transcript of the award give any evidence of its status; it appears to have been outside the area inclosed. The evidence supplied by WBA therefore does not support an upgrade of this footpath. Comparing the inclosure award plan, the award transcript, WBA's application map and the Council's online map of adopted highways, it appears that the three droves which they claimed have public vehicular rights as a result of being set out in the inclosure award are the ways marked F-G-B, D-E-C-G and D-C on their application map. F-G-B is part of the route named as Banwell Moor Drove and described as a "private road or drove way" in the award transcript; the other part of Banwell Moor Drove, as described in the award transcript, is now an adopted highway terminating at Moor Dairy (F). D-E-C-G is part of the route named as Middle Drove and described as a "private road or drove way" in the award transcript; the other part of Middle Drove, as described in the award transcript, is now an adopted highway terminating at D. D-C is the route named as West Drove and described as a "private road or drove way" in the award transcript. The transcript of the inclosure award suggests that the network of private roads or droveways set out over Banwell Moor, i.e. Banwell Moor Drove, Middle Drove, West Drove and Gout Drove (not claimed by WBA) may not have begun or terminated on existing highways at the time of the inclosure award. Banwell Moor Drove is described as "beginning at the Bridge near the south end of the said Moor marked with the Italic letter I", not from the Banwell-Rolstone road, and terminating at "a certain other place there called Moor Door and marked on the same plan with the Italic letter N", not on the route claimed as A-B. Middle Drove is described as beginning and terminating on Banwell Moor Drove. West Drove is described as beginning and terminating on Middle Drove. Gout Drove is described as beginning on Banwell Moor Drove and terminating at "a certain place there marked on the same plan with the Italic letter W". If these private roads or droveways did not begin and terminate on existing highways at the time of the inclosure award they could not have been dedicated as highways by the inclosure commissioners; nor could they have been ancient highways as argued by WBA. WBA suggested, in its letter of 22 January 1996, that the wording of the award at the end of the section transcribed which awards free liberty for the landowners, tenants and occupiers and "all other person and persons who shall or may have occasion to travel there to go pass and repass in through upon and over" the private roads or drove ways is a dedication of public rights. I disagree for the following reasons.

The full wording at the end of the section transcribed is:
"And we do by these presents order direct and award that the several private roads or droveways hereinbefore particularly mentioned to be set out and appointed in through and upon the said Moors Commons and Wastelands shall be and remain of the several and respective widths aforesaid between the ditches and fences and for the benefit use and enjoyment of all and every the Owners Tenants and Occupiers of the several and respective Divisions and Allotments Plots and parcels of land hereinafter mentioned to be by us Allotted Inclosed and Awarded with free liberty for them and every of them and all other person and persons who shall or may have occasion to travel there to go pass and repass in through upon and over the same either on foot or Horseback with Horses Cattle Carts and Carriages Loaded or unloaded at their and every of their free will and pleasure or otherwise howsoever when and as often as they any or either of them shall think proper."

This wording is about private vehicular rights which were awarded for the benefit, use and enjoyment of the owners and occupiers. If the inclosure commissioners had intended to dedicate public rights they would have explicitly awarded such public rights in the

same way as they awarded private rights. It would have been illogical to award private vehicular rights and then immediately go on to say that the droves also had public vehicular rights. It seems more probable to me that what the inclosure commissioners intended by free liberty for those who had occasion to travel the droves was to ensure that visitors to the allotments or other land accessed by the droves had private vehicular rights, as well as the owners and occupiers of the allotments.

If the inclosure commissioners had intended by this wording to dedicate public vehicular rights over the private roads or drove ways they had awarded, this would have resulted in many cul-de-sac public vehicular routes, which seems improbable. For example, the three private roads or drove ways awarded on Banwell Hurst (Walls Drove, Blackburrows Drove and Laney's Drove) are all described as beginning on the road from Banwell to Rolstone and terminating at old inclosures. The wording ensures that the owners, occupiers and other visitors to these old inclosures had private vehicular rights to do so, but there would have been no reason for the public to have vehicular rights on these cul-de-sac droves.

If the highway authority in the 19th or 20 centuries had considered that Banwell Moor Drove, Middle Drove and West Drove had been dedicated as public vehicular highways by the inclosure commissioners (or were pre-existing highways), it would have recorded the whole of these droves as adopted, publicly maintainable, highways, not just the parts of Banwell Moor Drove and Middle Drove which connect farms to the Banwell-Rolstone road.

3. I also question whether Greenwood's map supports WBA's application for public vehicular rights over these routes. 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 routes 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 (Gout Drove?) running north east from F, which is not on modern OS mapping 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 routes 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.

Mr M Trickey	Objection	I object on the basis the droves are privately owned for land and farmers use only as stated in the Manor of Banwell Inclosure Act 1795.
Mr R Trickey	Objection (1)	I would welcome and accept the laneways concerned to be opened up as official bridleways with pedestrian access with the surfaces being left how they currently are, as I believe this would provide a benefit to the local rural community However, I object to the laneways concerned being used for both motorised vehicles and bicycles.
Mr R Trickey	Objection (2)	Because I wasn't aware that cyclist access fell under the umbrella term of an official bridleway. I therefore oppose to all modification of the area concerned within the definitive map of Banwell Moor, Banwell.
Mrs J Grice	Objection	I'm writing to you to voice my opinion to the proposed changes regarding the lane that runs past my land on Moor road Banwell, I understand that these changes to recognise it as a Bridleway could potentially open it up to all traffic and that is Certainly NOT

what I would like to happen. These single track lanes have always been known to be called droves and not for public use but used solely for the land owners to move cattle and sheep and general practices connected with the land throughout the year. However local horse riders have and still use these tracks and it has become local knowledge and land owners do allow them to pass. The problem that I see happening with the reclassification is that once it becomes common knowledge and written onto the definitive map we will have everyone wanting to pass including off road vehicles 4x4, quad bikes and dirt track bikes. These lanes are historical and should remain just that as I feel once they are opened to all traffic we will be powerless to stop the relentless traffic and the impact on the lanes will be devastating with no exaggerating there will be no lanes left. Apart from landowners vehicles, horses and vehicles don't mix which the whole point of a Bridleway. Some of these lanes are already in a bad state of repair and during the winter months are quite impassable and it certainly is in my interest that my lane leading down to my land does not suffer the same fate with increased traffic through common knowledge to pass. Maintenance has come down to the landowners, they are responsible for their boundary hedges ditches and the lane, but as you are aware some parts have become almost impossible and possibly very dangerous to horse, walkers and damaging to vehicles, so who would be responsible for the upkeep if these lanes become open to all traffic? It is my wish that whilst I have no objection to horse riders, I feel that traffic should be restricted and that a Bridleway gate erected at the end of the lane with 1 Mtr access to allow riders through and not vehicles, a restricted byway sign much the same as behind Puxton Park, and again the lane leading from Nye road Puxton, these lanes both have these and work very well for horse riders. Whilst we all should be able to enjoy the countryside we must also think of our safety and security so this is my opinion and I hope I have raised some very valid points, I had attended the Parish meeting, and I hope I also speak for my fellow landowners and friends of many years that this will have minimal impact to us, but I understand this is just the first stage and that we will have another meeting in due course.

Mr & Mrs Bird	Objection	We would like to register our objection to route on Banwell Moor being made into a Bridleway.
Mr & Mrs Smith	Objection	We note that we have no knowledge of historical use of this footpath/farm track, although we assume it has always been used by farm carts, stock movement, pedestrians and horse traffic. We have lived in the property for approx. 18 years, during this time the only traffic that has used the track has been farm vehicles, horses and associated vehicles, people who own their own land, pedestrians and cyclists. We have no objection to the above use and would hope that the footpath would remain as is, or allowed to become a bridleway. The footpath has been gated, for security, for 15 plus years with no objection, the gate is located adjacent to Moor Dairy, it is shut at around 9pm each evening and reopened around 6 am, yet again with no objections to all who require access, those who live or require access have the code to open the gate should it be required. We are few in number that actually live in this section, our property is set approximately 2.5 metres from the footpath/track, if the proposal was allowed to go ahead it would cause ourselves and our neighbours problems, not only from a security point of view but also noise and potential issues from motorbikes/quads etc, who would not understand the current users, currently it is one of a few places that can be used for horse riding for ages plus dog walkers and cyclists, none of which we have a problem with.

We understand that nobody likes change, but on this occasion, we feel that it makes no sense to change, if you or anybody has walked round the area concerned you will note that it would not be possible to access all areas with a normal vehicle as most the areas concerned are rutted farm tracks and not suitable to all traffic.

Mr S Caiger	Objection	<p>Further to our conversation today, I write to voice my opinions regarding opening the track at the end of Moor Road to 'all traffic'. The proposed route as marked on your route, is used on a daily basis by horse riders, field owners and ramblers who use it to connect with local footpaths. It is unsuitable for motor vehicles other than tractors and other farm vehicles due to its unmaintained surface, and in the winter, becomes extremely boggy with deep mud.</p> <p>I would like to oppose any plans to open the route to 'all vehicles' as in reality, this would only invite quad bikers and off roaders. As proprietors of a small equestrian centre we would seek to have the lane declared a bridleway only. We work with vulnerable young people and adults on a daily basis who enjoy riding along this route and not having to encounter traffic which can unsettle both horse and rider.</p> <p>The area discussed is also rich in wildlife including; Heron, Little Egret, Lapwing, Roe Deer, Kingfisher and Otter. The use of the route for motor vehicles would surely be detrimental to such wildlife and disturb nesting birds etc.</p> <p>I hope that my comments will be taken into consideration before any decision is made regarding the future of this path.</p>
Ms P O'Meara	Support for Bridleway	<p>We wish to add the usage of the following Drovers that we have been using for at least 20 years horse riding walking and dog walking and would like to see them classified as Bridleways;</p> <ol style="list-style-type: none">1. Silvermoor Lane to Riverside (Trickey's Lane)2. Moor Rd leading into Silvermoor Lane3. Silvermoor Lane leading into Wolvershill Rd.4. Balls Barn Lane leading into Puxton Road5. Loop from Moor Road following Old Yeo Rhyne.
Mr B Mitchell	Objection	<p>I will be writing concerning this application not to oppose the occasional use by pedestrian or horse rider but to voice concern at the use by vehicles and the effect that could have on both landowner access, the long-term enjoyment and safety of pedestrians/horse owners, the effects on wildlife and answering the question who maintains/pays for the integrity of the byway and its wider use by the community.</p> <p>While I am formulating my reply – I have just reviewed pictures I took at the Somerset Archives of the enclosure document for Banwell Moor that clearly states "One private road or Drove Way in the said moor" when defining (in width) and relating to the map, the line of each drove.</p>

Date of Challenge

For public rights to have been acquired under Section 31 of the Highways Act 1980, a twenty year period must be identified prior to an event which brings those rights into question. In this case no user evidence has been supplied to assist. However it should be noted that a number of the responses detailed above make reference to these routes being used by walkers, horse riders and cyclists.

Similarly for a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. Similarly within the information

above it would appear that such use has been known to adjacent owners of the land implying dedication by the landowner. This would be in addition to the use of the Public Footpaths AX 3/45 and AX 3/29.

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 4th November 2004.

Summary of Evidence and Conclusion

Summary of Documentary Evidence

A considerable number of documents have been taken into consideration when determining this matter. Taking all of the documents into consideration the majority of these documents illustrate the existence of the routes along these lines since 1797, however the fact that these are depicted does not confirm status.

The applicants have placed their reliance on many maps dating between 1797 and 1922 where some or all of these routes appear to be depicted, sometimes coloured however this does not assist with status but does support existence.

As detailed in Appendices 3 and 4 in the Enclosure Award of 1797 most of these routes were given a title "Moor Wall, Middle Drove, and West Drove" and described as Private Carriage Roads for the use of the owners or occupiers. As the enclosure process of 1797 was setting out these routes to preserve use that was being made of them, this is a clear indication of the use that was being made of them then.

The route A-B seems to fall outside of the area of Enclosure and it is unclear as to where it went as this is not marked on the plan. However, its depiction is like that of the other route outside of the area of Enclosure which is marked Banwell to Rolston.

The Banwell Roads map is entitled "Map of Banwell showing the Roads Watercourse and Houses of that Parish". This shows routes coloured implying that they were capable of being used by the parish. However, the status of use is unclear and it should be noted that dead end routes are also marked.

Unfortunately, the Finance Plans are of a poor quality due to trying to merge into one image. Whilst all of the claimed routes are illustrated the colouring normally visible on finance plans is not so apparent.

All the plans looked at within this section have illustrated that these routes have existed on the ground since 1797, provided access to the fields and have provided through routes to other areas of the countryside. However, no evidence has been found to show that they have been maintained as public highway like the highways that they connect to.

Whilst these may well have been routes used back to the 1700s for accessing other areas of the countryside no evidence has been produced or found to support that these routes have established vehicular rights and that they should be recorded as Byways open to all Traffic.

During the production of the Definitive Map in 1950 only the parts A-B and F-G were recorded on the Definitive Map as footpaths, the reason for this is unclear but nothing has been found to suggest that at this time this classification was incorrect. These surveys were carried out by persons on foot.

Taking all the documentary evidence into consideration although sufficient evidence has been found to support the existence of all of these routes, nothing has been found to support their status. The route A-B which is already recorded as Footpath AX 3/45 can be accessed either from Riverside or the County Road near Waterloo Farm. Taking the route J-I-H-C-E-D, this also runs between two adopted highways Silver Moor Lane and Lane off

Moor Road, C-D being a spur off J-D and F-G (which is already recorded as Footpath AX3/29) commences off an adopted road Moor Road and connecting to J via point H. There is connectivity with these routes with no historical evidence to show that physical barriers existed to stop use being made of them. There is no evidence to show that these routes have established vehicular rights, only private rights by the landowners.

Therefore, based on this documentary evidence, the Officer does not feel that the evidence supports the claim that these routes should be recorded on the Definitive Map as Byways open to all Traffic.

Summary of Landowner Evidence

All owners of the land adjacent to these routes have been consulted. The responses received detailed in Appendix 5 illustrate that the main objections would be to open these routes as Byways open to All Traffic. Information has been given of historical use by horse riders and cyclists, one user confirming use driving a carriage. None of these objectors have challenged use made although more recently gates have been used to stop fly tipping and 4 x 4 use.

The focus of the evidence relating to use seems to be on the main routes A-B, F-G-H and J-I-H-C-E-D, with only one objector recalling use being made of C-D 40 years ago before it was blocked off. Evidence has been given of routes being unsuitable for mechanically propelled vehicles and the effect such use would have on the surface condition.

Objection has also been received from the Green Lane Protection Group regarding the validity of the application. This application which was submitted in November 2004 predated the introduction of the Natural Environment and Rural Communities Act 2006 which carried a relevant date of 2 May 2006. Any rights established for mechanically propelled vehicles before that date were extinguished by this act. However, as it is felt that no evidence has been shown to support a status of a Byway Open to all Traffic no further consideration of the Natural Environment Rural Communities Act 2006 needs to be undertaken.

Therefore, based upon the evidence from the landowners and users there is sufficient evidence to suggest that the claimed routes A-B, F-G-H and J-I-H-C-E-D should be recorded on the Definitive Map as Bridleways. There is no evidence to support use by mechanically propelled vehicles and one user in a carriage is insufficient to record Restricted Byways. All the landowners who have responded to the consultation seem to have accepted the use by horse riders, cyclists and pedestrians without challenging.

The route C-D is less clear. Whilst this route has been depicted on mapping since 1797, detailed during the Enclosure Process as a Private Carriage Road (West Drove) there does not seem to be any evidence to support the claim that this route has been used extensively by the public. The evidence given would suggest that this route has been obstructed for the last 40 years (around 1978).

Conclusion

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

that it is felt that the evidence reviewed in the investigation supports the application on the balance of probabilities.

When considering this matter, it should be noted that evidence from those consulted has been provided to support the claim that the routes A-B, F-G-H and J-I-H-C-E-D have been used by pedestrians, cyclists or horse riders.

Looking at these routes individually, A-B seems to first appear on maps in 1797. A-B was set out in the Enclosure Award 1797 as a Private Road or Drove Way known as Moor Wall. This route is illustrated on all of the historical evidence since then depicted on a similar line to that shown today. A-B became Footpath AX3/45 as part of the Definitive Map process acknowledging that public rights were being exercised.

Regarding the routes J-I-H-C-E-D and C-D, the Enclosure award splits this section into two different routes as Private Drove Ways named Middle Drove (J-I-H-C-E-D) and West Drove (C-D).

Finally, with regard to route F-G-H, the Enclosure Award in 1797 describes a route (over which this claimed route forms part) as a Private Carriage or Drove Way known as Banwell Moor Road. Part of this route has in later time become adopted highway which then leads to the section F-G recorded as Footpath AX 3/29 as part of the Definitive Map process acknowledging that public rights were being exercised.

Whilst it is felt by the officer that neither the documentary evidence or the comments received supports the routes A-B, J-I-H-C-E-D, C-D and F-G-H being Byways open to all Traffic, it is felt, that taken, the documentary evidence and comments received, it is reasonable to allege that the routes J-I-H-C-E-D and G-H should be recorded as Bridleways especially as evidence suggests that they have and are being used by horse riders and cyclists.

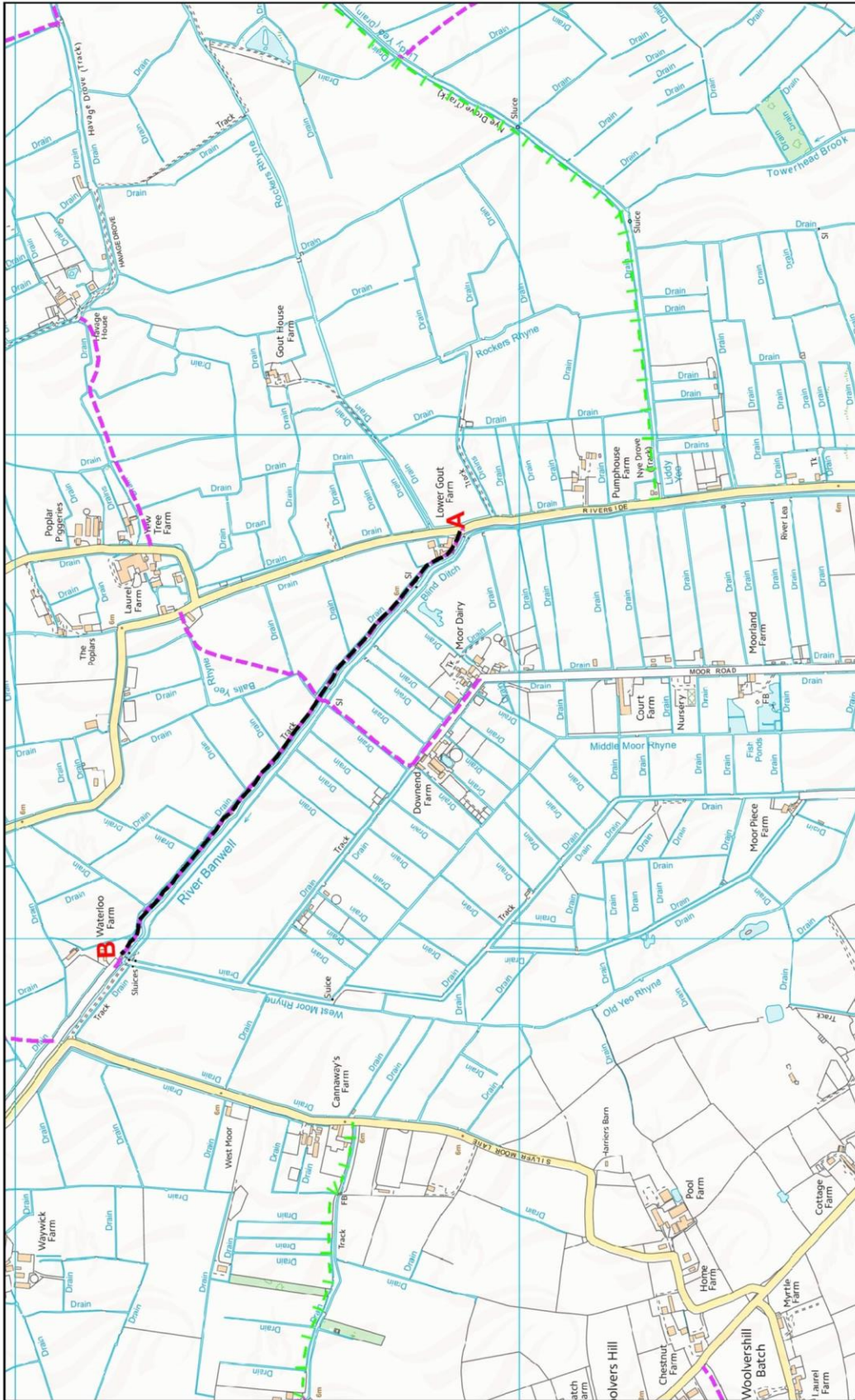
Regarding the routes A-B and F-G as these sections are already public footpaths the higher test of "on the balance of probabilities" needs to be considered.

It is felt that that the documentary evidence, supported by the comments submitted through the consultation process show that use has been made of these routes by cyclists and horse riders and that therefore on the balance of probability that these sections should be upgraded to bridleway.

The options that need to be considered are:

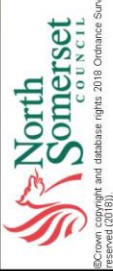
1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B.
2. Whether the evidence supports the making of a Definitive Map Modification Order for the route J-I-H-C-E-D
3. Whether the evidence supports the making of a Definitive Map Modification Order for the route C-D.
4. Whether the evidence supports the making of a Definitive Map Modification Order for the route F-G-H.
5. Whether any of the applications described in 1, 2, 3 or 4 above should be denied as there is insufficient evidence to support the making of an Order.
5. If the Committee accepts the recommendation of the Officer that Orders should be made for the routes, they are asked to authorise the confirmation of the Orders if no representations or objections are received.

6. That it is understood that if objections are made, the Orders will be forwarded to the Secretary of State for determination. If this happens, subject to the Officers being content that there was no significant change to the balance of evidence; the Council will support the Order at any subsequent Public Inquiry.

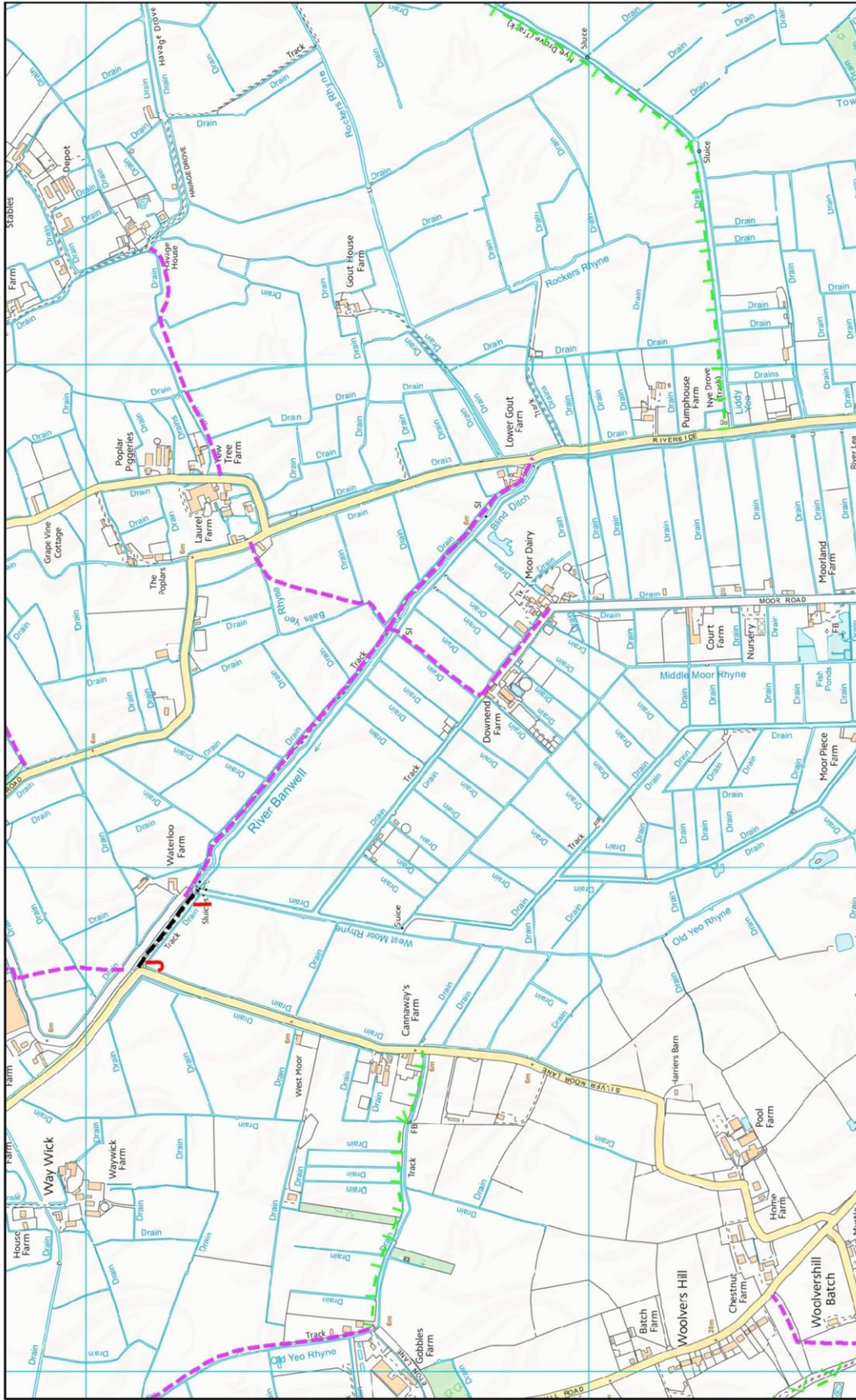


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Date: 06 August 2018

EB/MOD 58 (Route A-B)



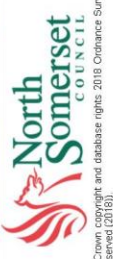
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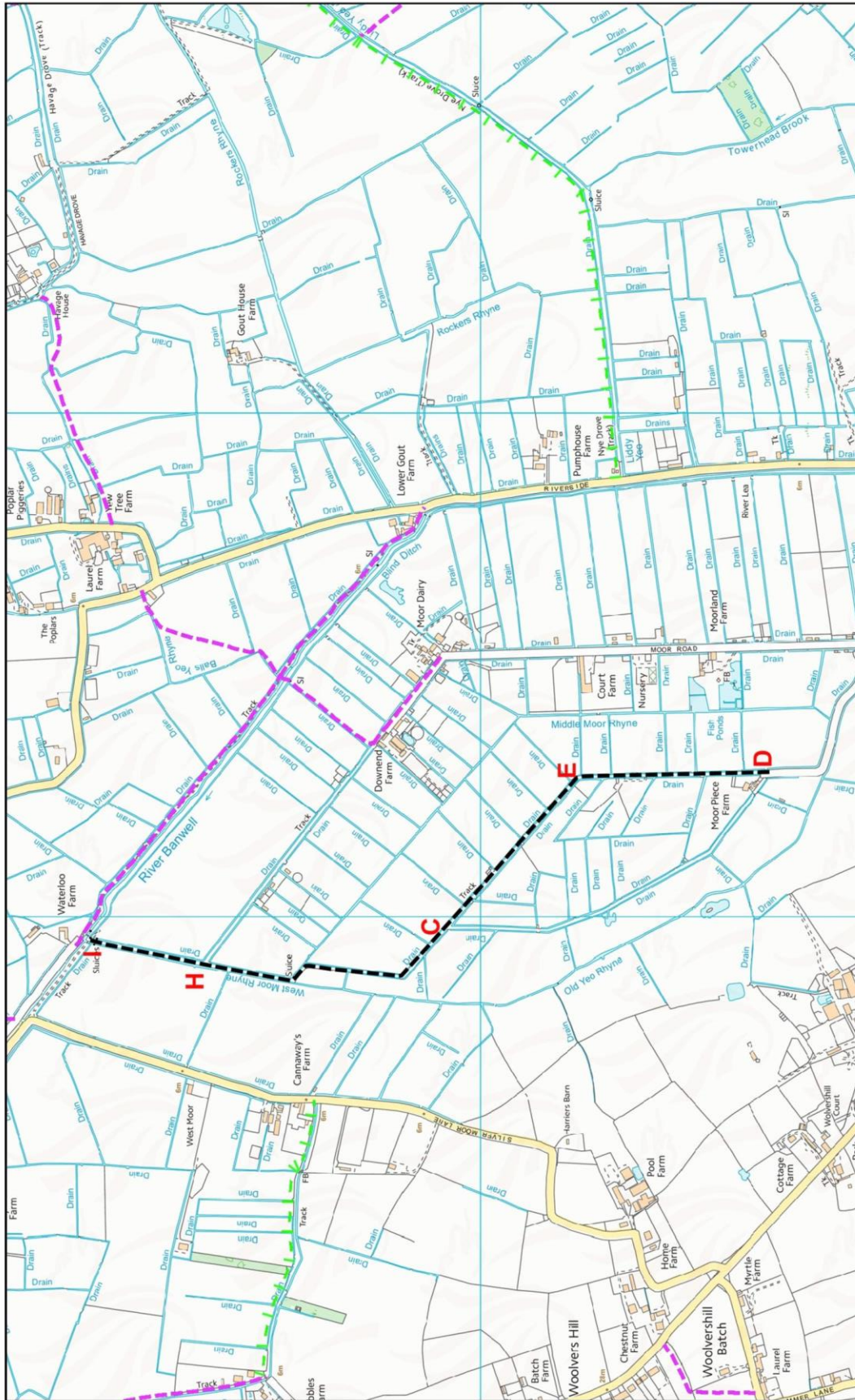
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Date: 13 August 2018

Route J-I



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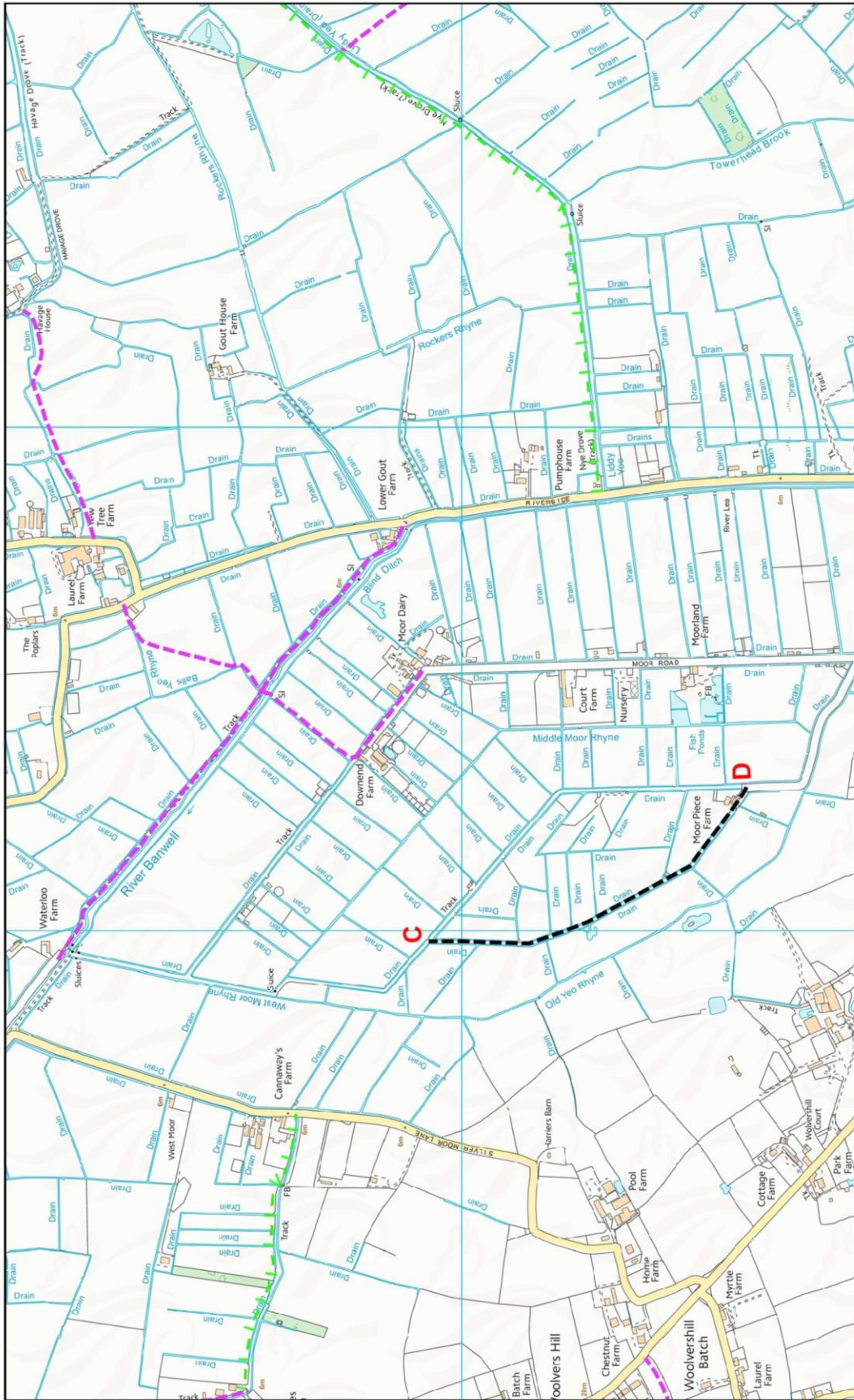
Route I-H-C-E-D

Scale: 1:10000

Date: 31 August 2018



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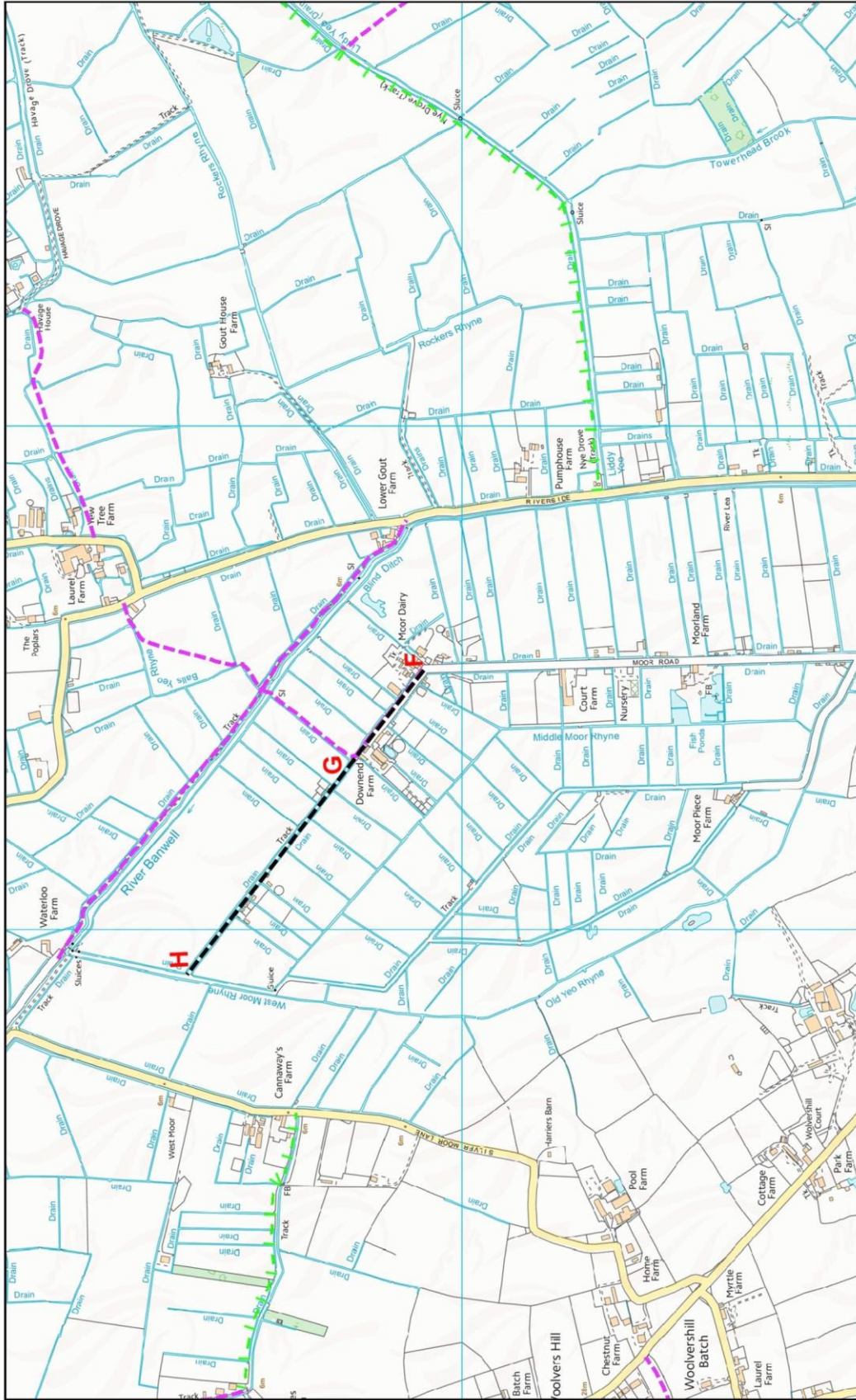
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Date: 06 August 2018

EB/MOD58 (Route C-D)



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Scale: 1:10000
Date: 06 August 2018

EB/MOD58 (Route F-G-H)

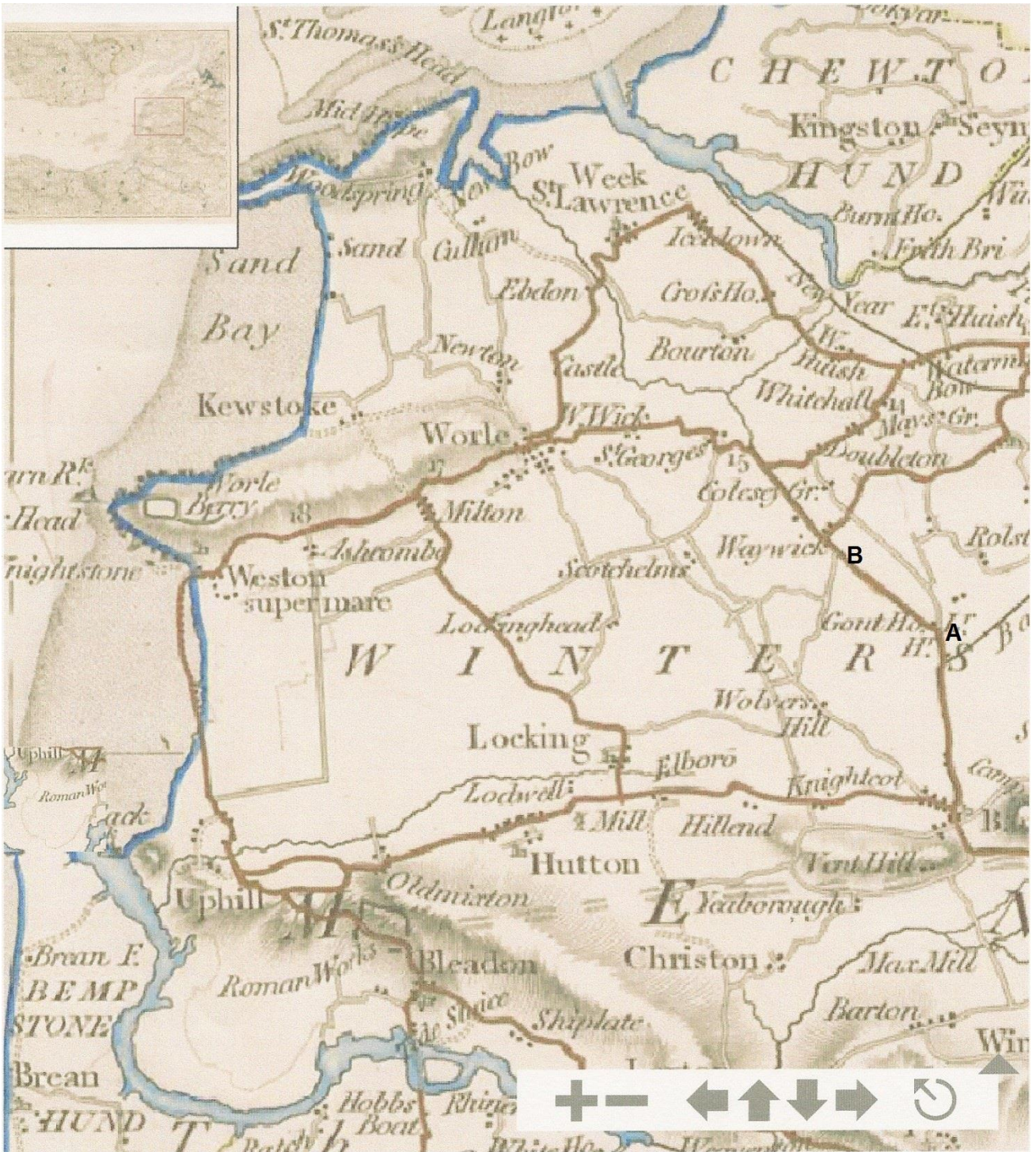


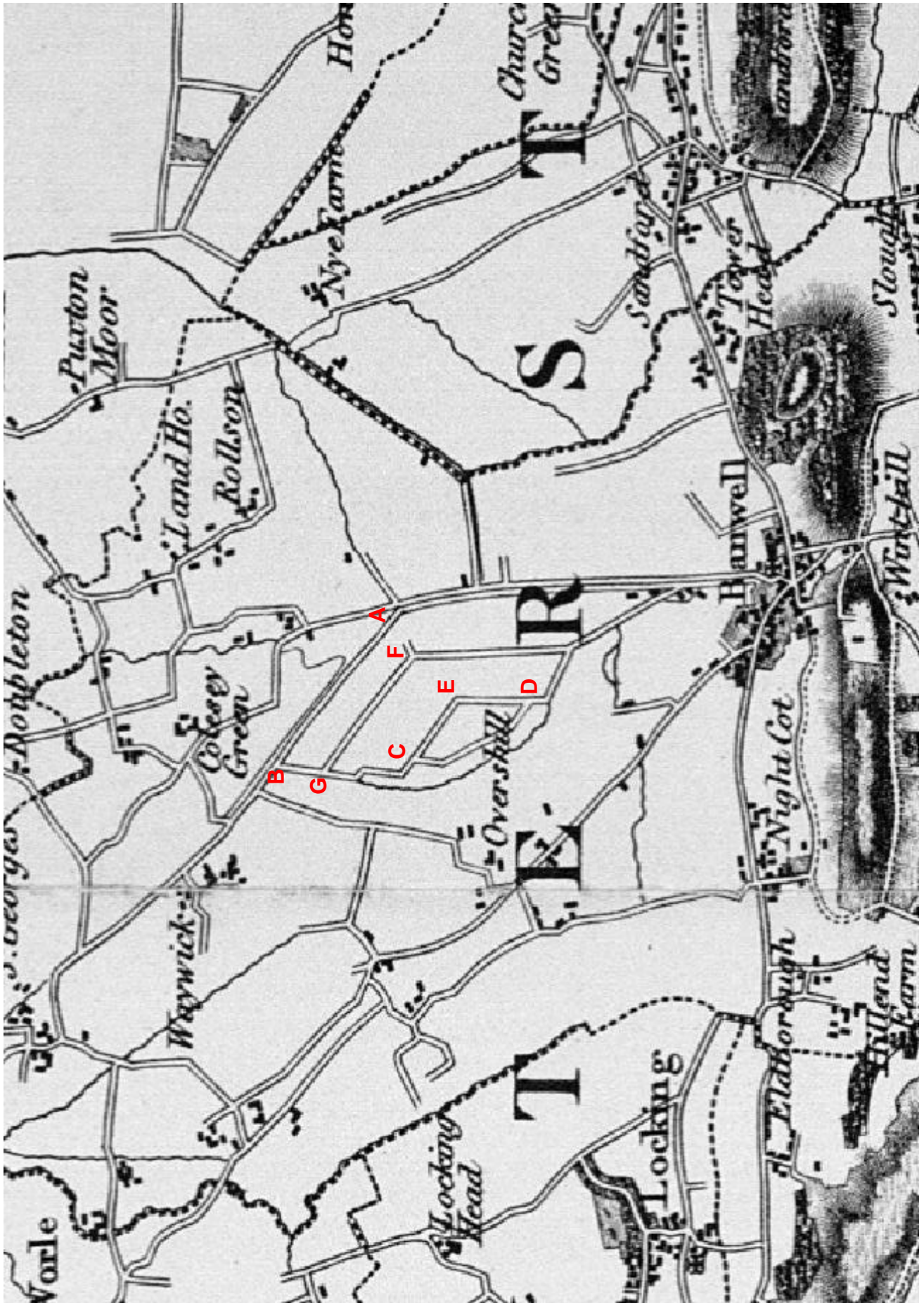
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DOCUMENT 6
PLAN OF BANWELL WASTE LANDS AND ENCLOSURE AWARD (1797)

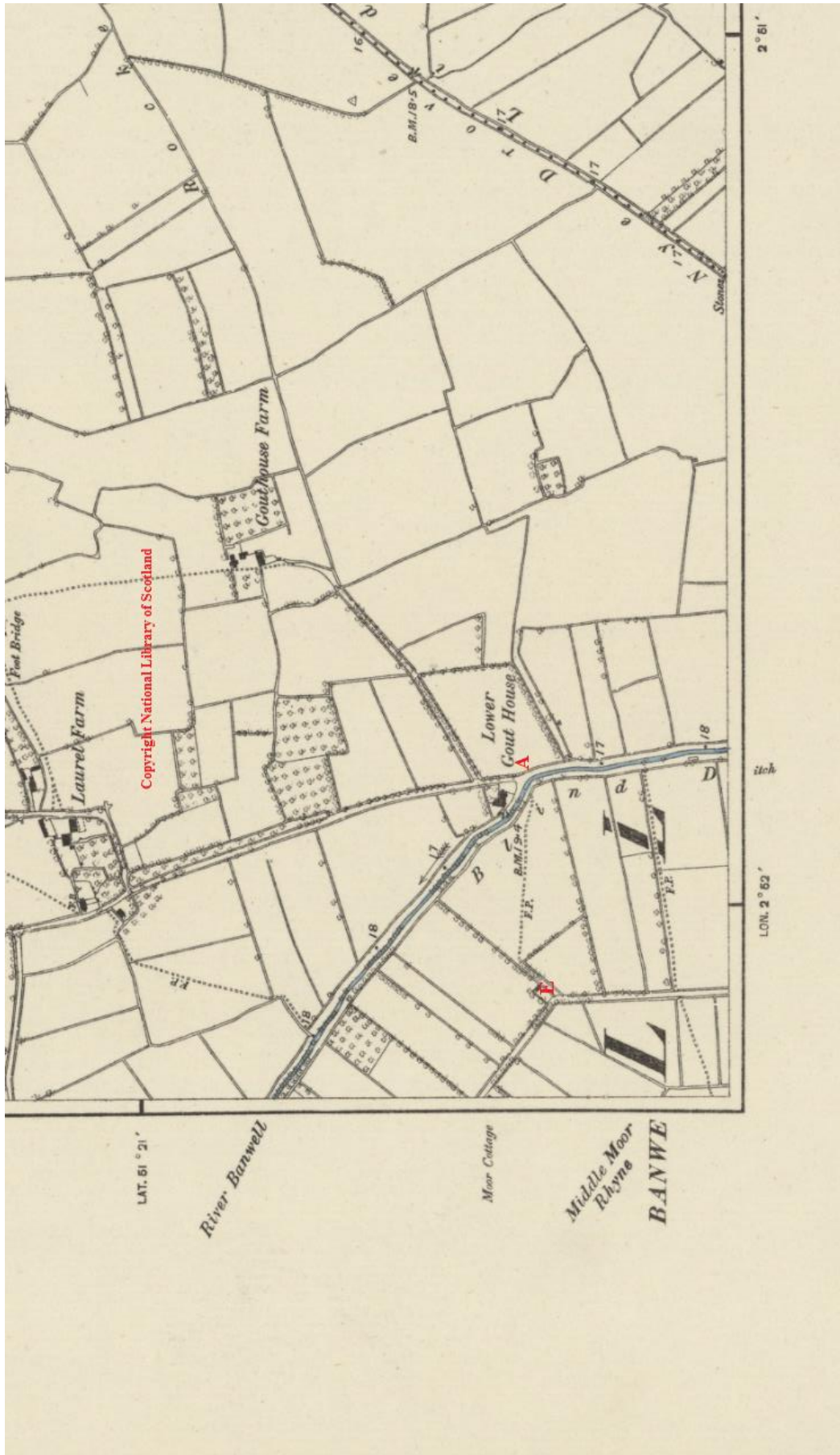


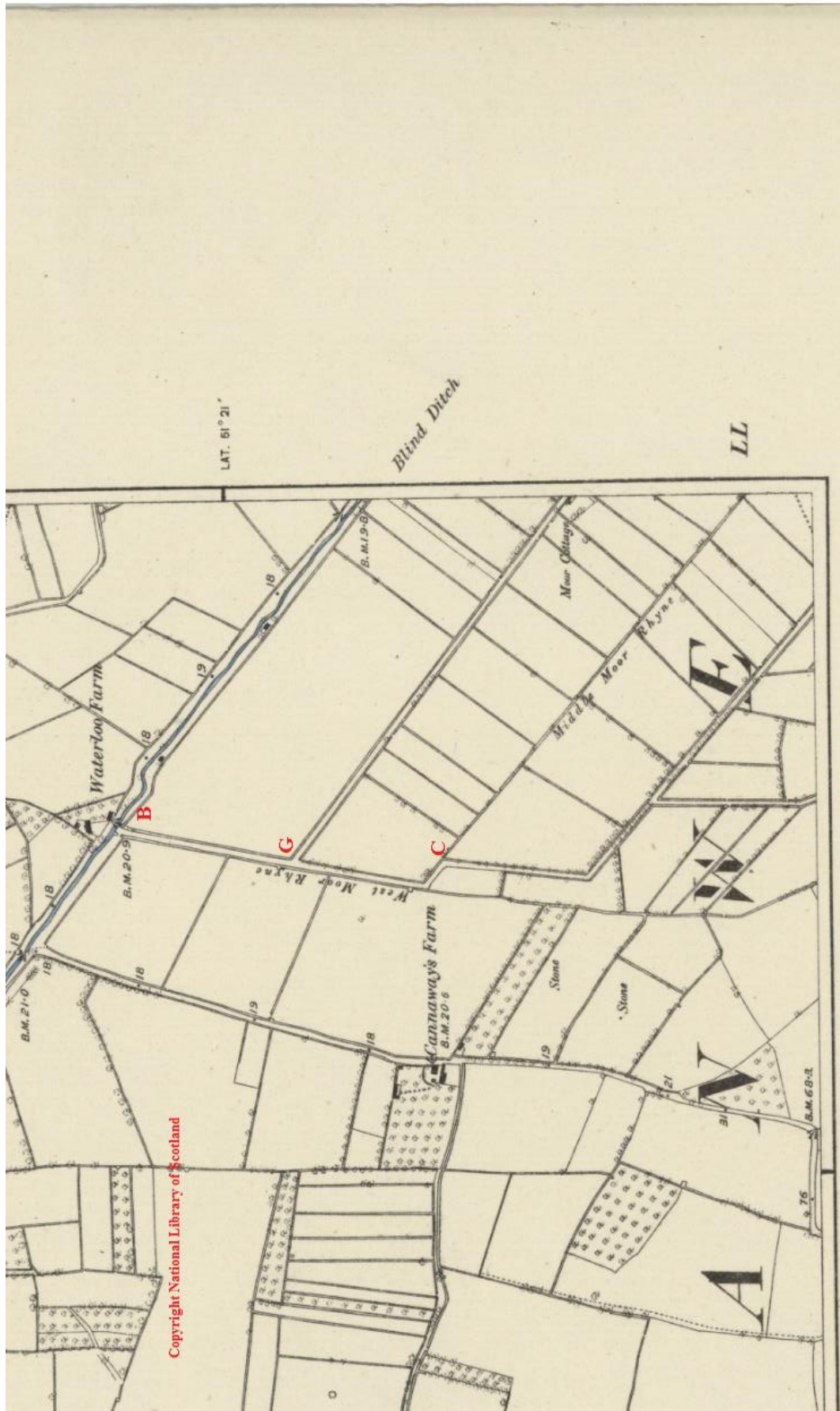
DOCUMENT 8
CARY'S IMPROVED MAP OF ENGLAND (1832)



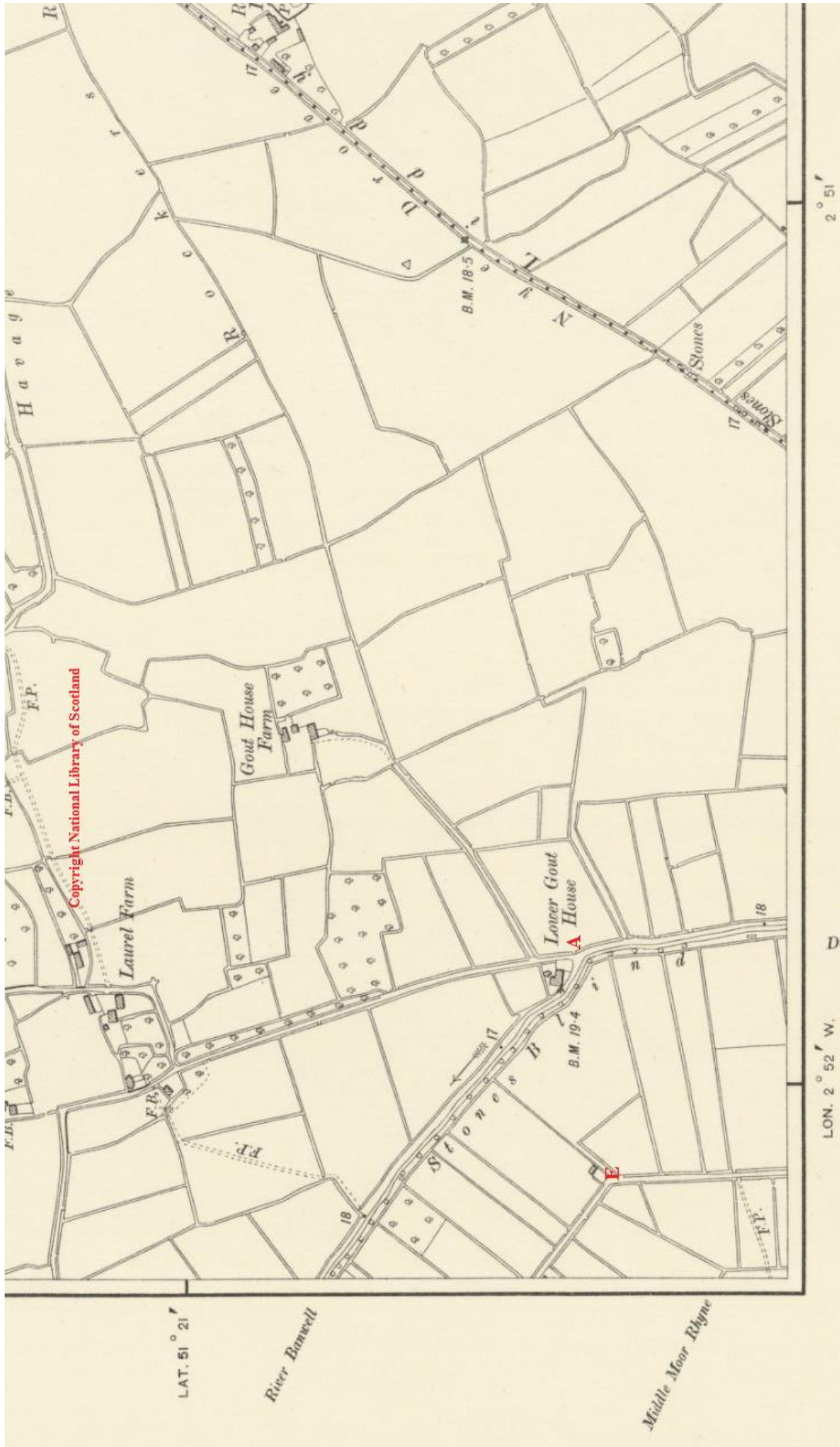


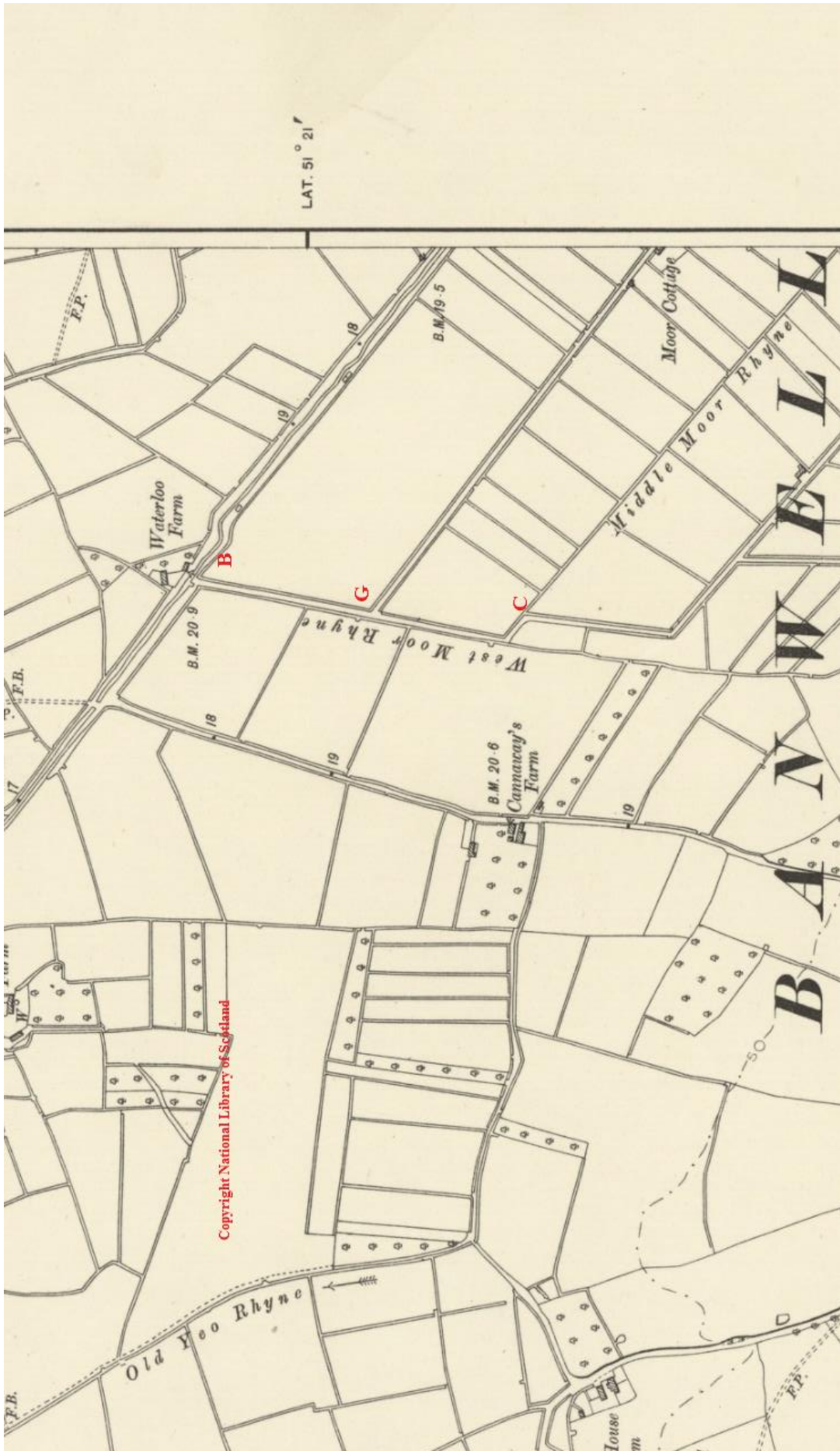
DOCUMENT 10a
ORDNANCE SURVEY MAP (1884)



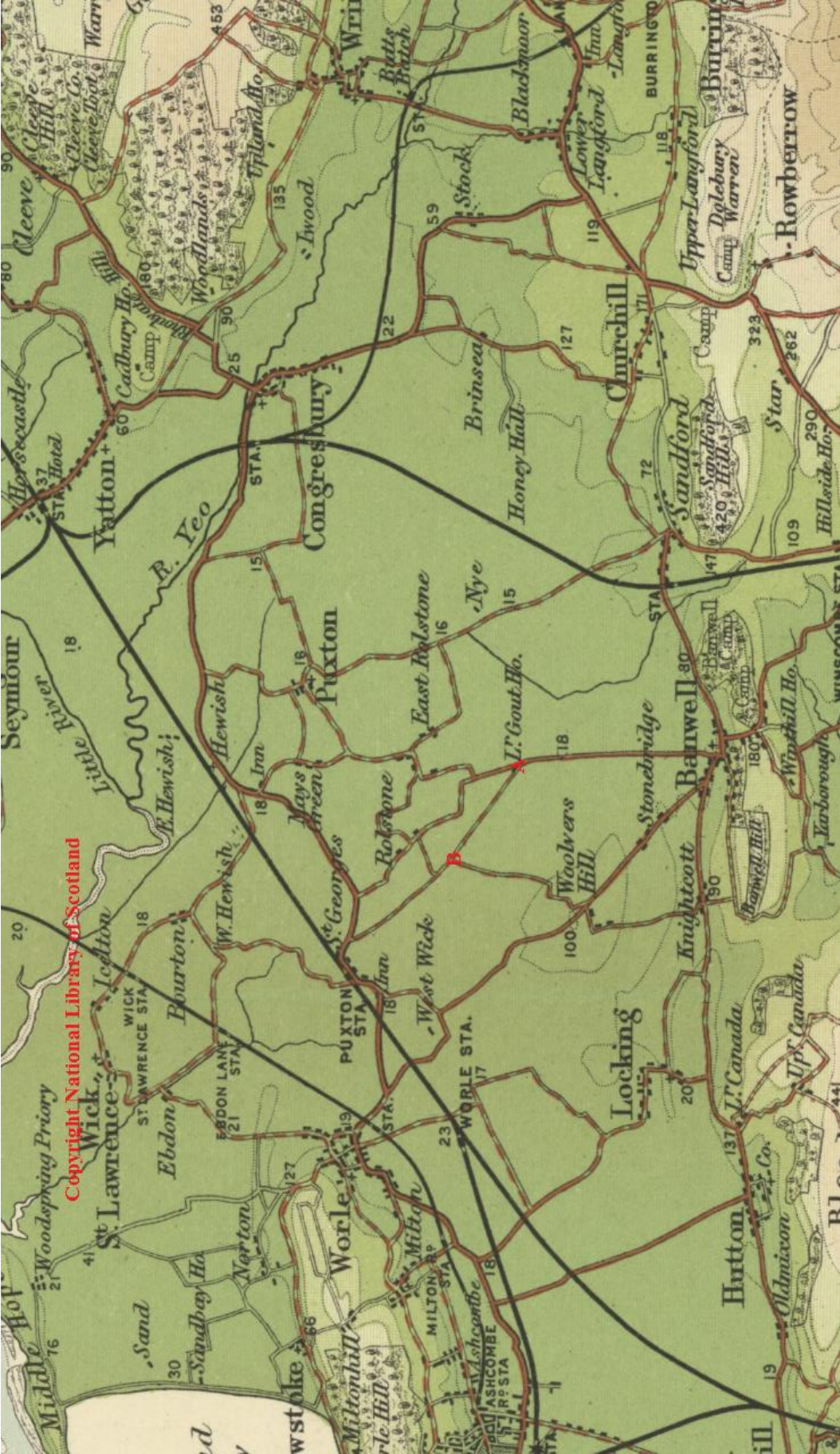


DOCUMENT 11a
ORDNANCE SURVEY MAP (1904)



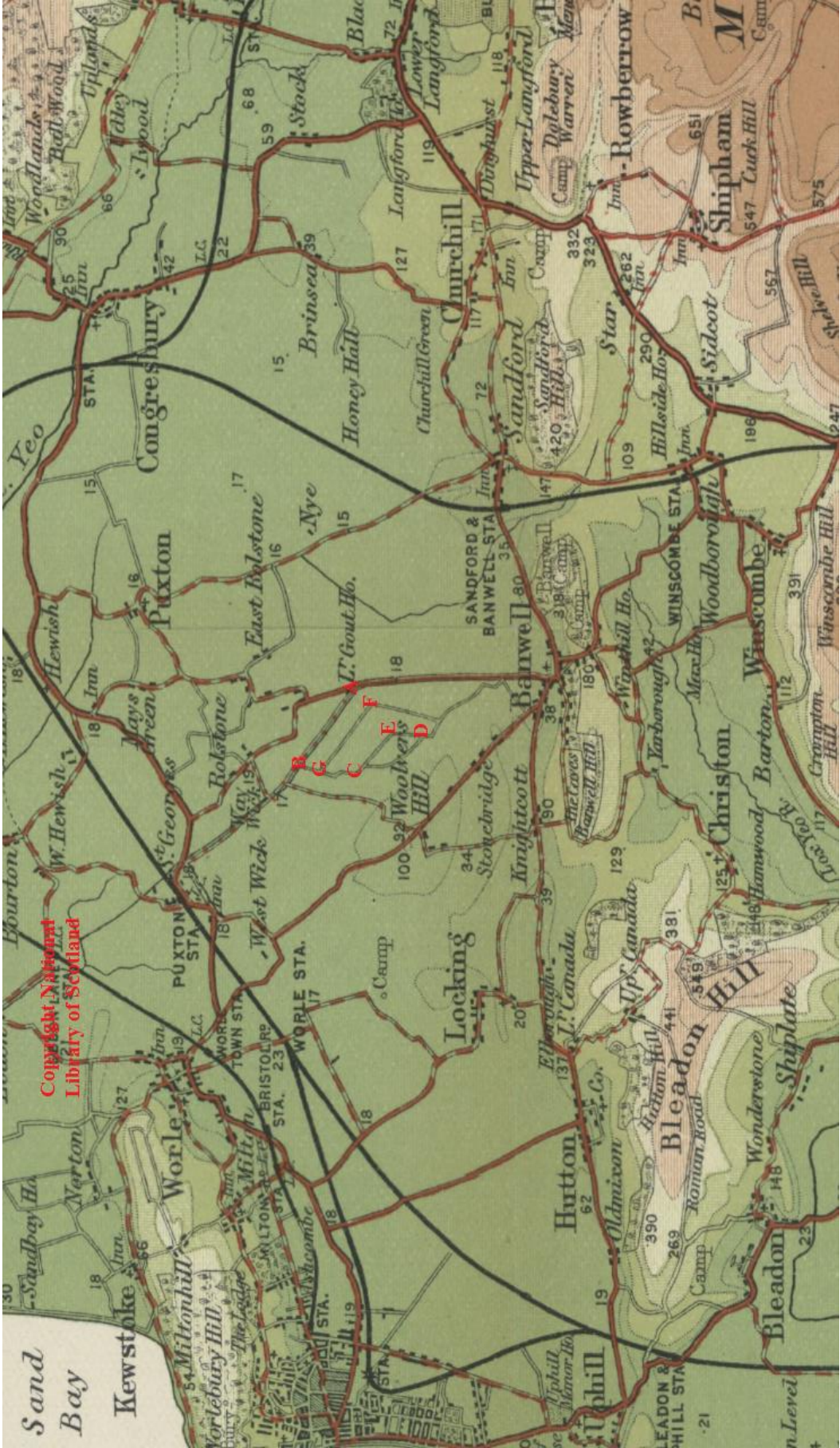


DOCUMENT 12
BARTHOLOMEW ROAD MAP SIX INCHES TO THE MILE (1904)



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DOCUMENT 13
BARTHOLOMEW ROAD MAP SIX INCHES TO THE MILE (1922)



and Purvat load or Stone way is particularly delineated in the same Plan and likewise described by the name of **London Stone** -

Southwell Moor } Our Purvat load or Stone way in the said Moor of twenty five feet wide beginning at the Bridge near the third End of the said Moor and extending on the said Moor
Plan with the Hair letter **I** and extending from thence north westward to a certain place in the said Moor marked with the Hair letter **J** and extending
from thence northward to a certain place near the Hair letter **K** and extending from thence northward to a certain place marked with the Hair letter **L** and extending
from thence northward to a certain place with the Hair letter **M** and extending from thence northward to a certain place with the Hair letter **N** which said Moor
is divided in the said Moor of twenty five feet wide beginning at the same place as the said Moor and extending on the said Moor
with the Hair letter **K** and extending from thence north westward to a certain place with the Hair letter **O** and extending from
thence northward to a certain place with the Hair letter **P** and extending from thence northward to a certain place with the Hair letter **Q** and extending from
thence northward to a certain place with the Hair letter **R** and from thence northward to a certain place with the Hair letter **S** and from thence northward to
a certain place with the Hair letter **T** and from thence northward to a certain place with the Hair letter **U** and from thence northward to
a certain place with the Hair letter **V** which said Moor is particularly delineated in the same Plan and likewise described by the name of **London Stone** -

Middle Moor } Our other Purvat load or Stone way in the said Moor of twenty five feet wide beginning at a certain place in the said Moor marked with the Hair letter **O**
and extending from thence north westward to a certain place with the Hair letter **P** and extending from thence northward to a certain place with the Hair letter **Q**
and from thence northward to a certain place with the Hair letter **R** and from thence northward to a certain place with the Hair letter **S** and from thence
northward to a certain place with the Hair letter **T** and from thence northward to a certain place with the Hair letter **U** and from thence northward to
a certain place with the Hair letter **V** which said Moor is particularly delineated in the same Plan and likewise described by the name of **London Stone** -

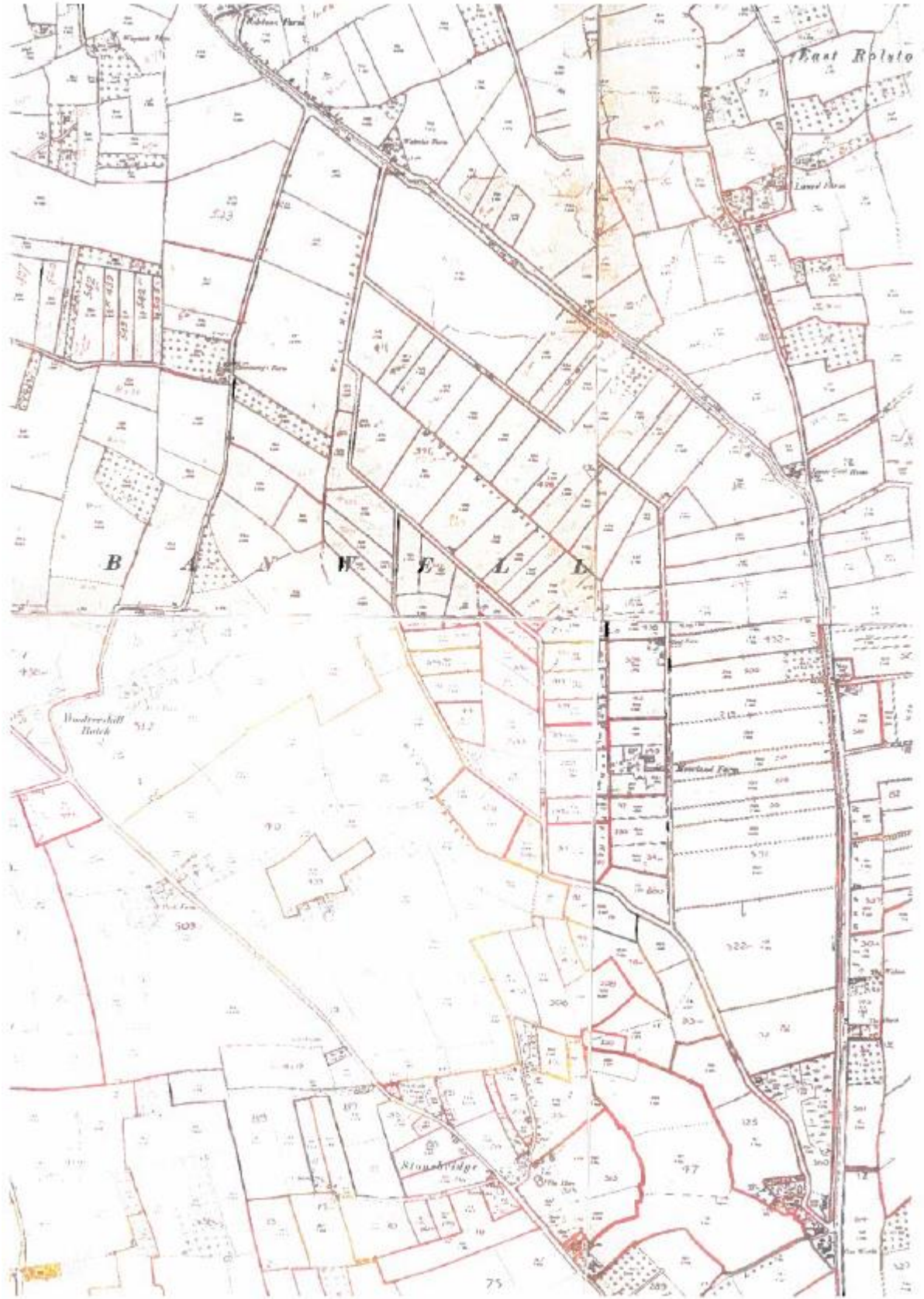
West Moor } Our other Purvat load or Stone way in the said Moor of twenty five feet wide beginning at a certain place in the said Moor marked with the Hair letter **O**
and extending from thence north westward to a certain place with the Hair letter **P** and extending from thence northward to a certain place with the Hair letter **Q**
and from thence northward to a certain place with the Hair letter **R** and from thence northward to a certain place with the Hair letter **S** and from thence
northward to a certain place with the Hair letter **T** and from thence northward to a certain place with the Hair letter **U** and from thence northward to
a certain place with the Hair letter **V** which said Moor is particularly delineated in the same Plan and likewise described by the name of **London Stone** -

South Moor } Our other Purvat load or Stone way in the said Moor of twenty five feet wide beginning at a certain place in the said Moor marked with the Hair letter **O**
and extending from thence north westward to a certain place with the Hair letter **P** and extending from thence northward to a certain place with the Hair letter **Q**
and from thence northward to a certain place with the Hair letter **R** and from thence northward to a certain place with the Hair letter **S** and from thence
northward to a certain place with the Hair letter **T** and from thence northward to a certain place with the Hair letter **U** and from thence northward to
a certain place with the Hair letter **V** which said Moor is particularly delineated in the same Plan and likewise described by the name of **London Stone** -

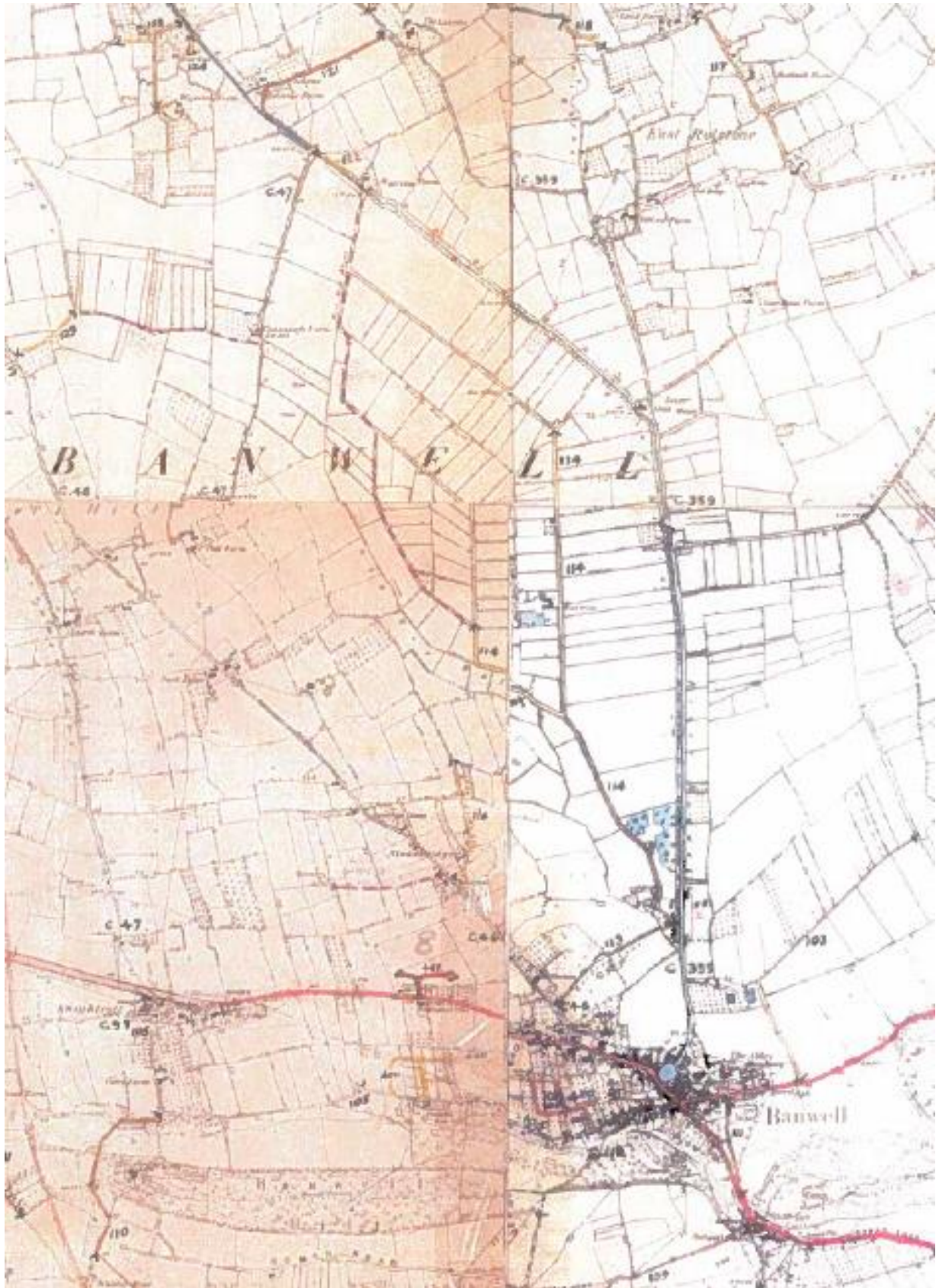
Wm Haycock Clerk







DOCUMENT 17
HANDOVER MAP 1930



DOCUMENT 18
WALKING CARD FOR FOOTPATH AX 3/45

SOMERSET COUNTY COUNCIL
BOROUGH/URBAN DISTRICT/PARISH OF :- *Bansell*
(Delete as necessary)

(Plant No) NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :- *45* Path shown on 6" O.S. No. :- Kind of Path, i.e. F.P., ~~B.R.~~, ~~C.R.F.~~ or B.R.F. :-

DESCRIPTION :- The path starts at *End of County Road by Waterloo Farm*
and runs in a south easterly direction to dyke at
Lower Gout House.

10 Sw

11.38008 P.T.O.

WALKING CARD FOR FOOTPATH AX 3/29

SOMERSET COUNTY COUNCIL
BOROUGH/URBAN DISTRICT/PARISH OF :- *Bansell*
(Delete as necessary)

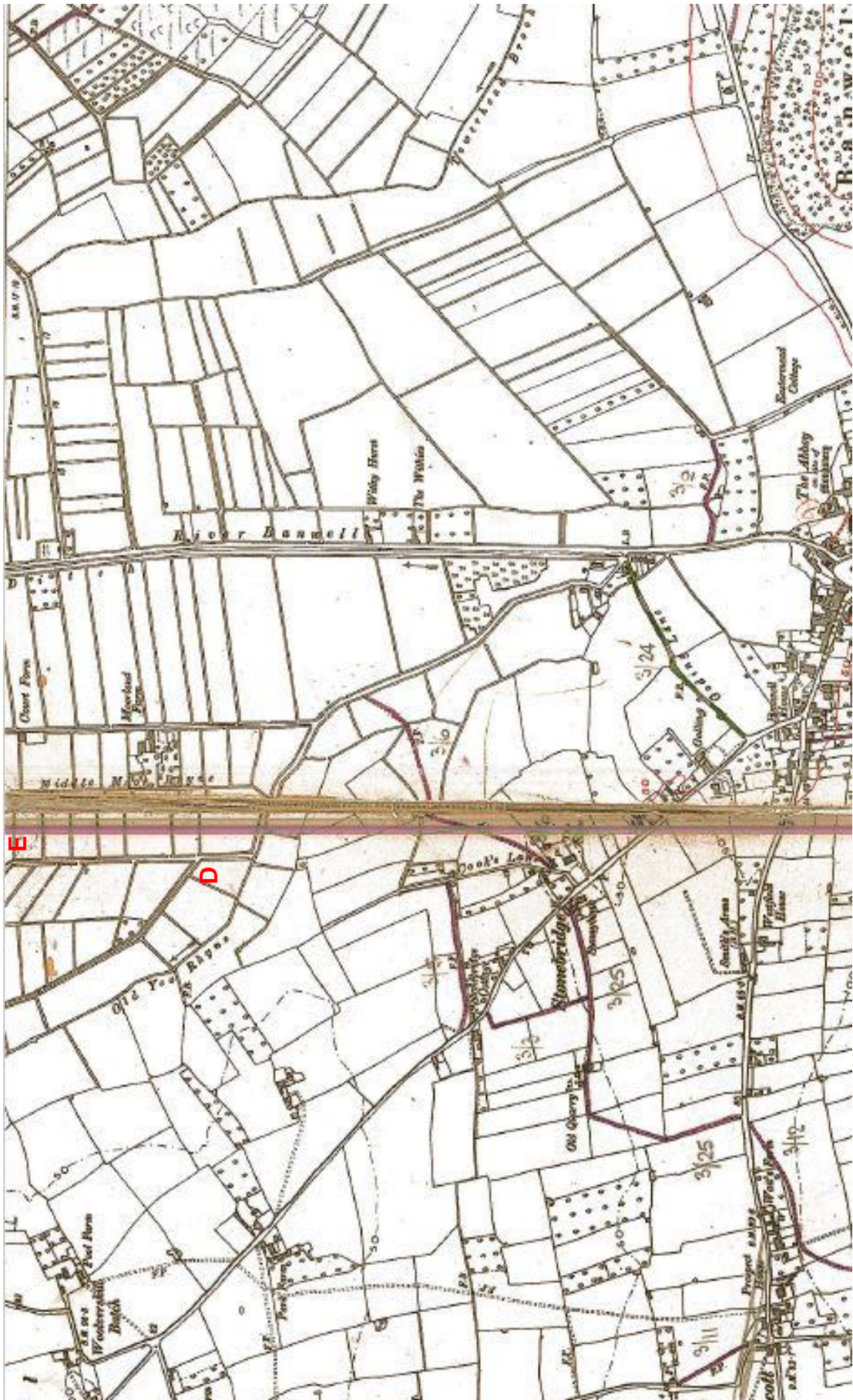
NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :- *29* Path shown on 6" O.S. No. :- *XSE*
XSW Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :-

DESCRIPTION :- The path starts at *from white Rails to Bansell Moor Drive*
near Moor Cottage Site - 7B.

See No. 24 on Parish card
at beginning

11.38003 P.T.O.



No.	Applicant	Particulars	Remarks	Action
2.	Barwell The Ramblers' Association (82, P. 3, Marlott, B. 20) Secy: Secretary 14 Shipley Road, Westbury-on-Trym, Bristol. 3145/013	Omission of continuation of 3/2.	This is a county road - No. 100.	No action.
3.	do. 3145/013	Omission of path from south end of 3/25 south easterly via Peterloo Farm to County road at Lower Coat House.	Described as private road in Enclosure Award, 1797. P.C. think this is a public road. Evidence of use as a foot-path available.	3/45 Add Footpath to County-road to south-east of 3/25 3/45 Add Footpath to Map.
4.	do. 3145/013	Omission of path from County road west of Roman Villa (site of) westerly along Old Roman road to County road north of Whitely Head.	Described as private way in Enclosure Award, 1797 but evidence of public user.	3/47 Add Footpath to Map.
5.	do. 3145/013	Omission of path from Zamell Castle north west and west to junction with 3/27.	No evidence of public user available.	Delete 3/2.
6.	do. 3145/013	Inclusion of 3/2 from Box Hill Lane westerly along north side of Box Tree River to junction with 3/39, thence north westerly to County road opposite Box Cottage.	No evidence of public user available.	3/350 Delete 3/2.
7.	do. Messrs. Clutton, Hippisley & Lloyd, Surveyors & Land Agents, Wells. 877 - 8/55 (on behalf of H. H. Kerr)	Inclusion of 3/39 from junction with 3/2 south westerly along north side of Box Tree River to Mascombe parish boundary.	Having regard to decision on 7 & 8 claim of R.A., appears to be logical.	3/39 Add Footpath to Map.
8.	do. 3145/013	Continuation of 29/28 (Mascombe) in westerly along parish boundary to County road at Yarbrough and not easterly to junction with 3/2.		3/31 Add Footpath to Map.
9.	do. Barwell London			

