

# North Somerset Council

**REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE**

**DATE OF MEETING: 15 JANUARY 2019**

**SUBJECT OF REPORT: MOD 61 LILLYPOOL DROVE, KENN MOOR**

**TOWN OR PARISH: KENN**

**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 for the route A-B-C on the grounds that there is sufficient evidence that Restricted Byway rights should be recorded on the Definitive Map; and
- (ii) if no objections are made and sustained, that authorisation be given for the confirmation of this Order; and
- (iii) that if objections are made, that the Order 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 Order at any subsequent Public Inquiry.

## **1. SUMMARY OF REPORT**

This report is considering an application which was made on the 13 January 2005. That application requested that a route, in the Parish of Kenn, should be recorded as a Byway Open to all Traffic. Such application for a Definitive Map Modification Order is submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of this request, should an Order be made and confirmed, would be to amend the Definitive Map and Statement for the area.

The application, submitted by Woodspring Bridleways Association, has referred to one document as the evidence upon which they wish to rely. No user evidence has been provided by the applicant so this report will be based solely on historical documentary evidence and that supplied by consulted parties. The claimed route is illustrated on the attached Location Plan EB/Mod 61 as A-B-C.

On the 6<sup>th</sup> December 2016 North Somerset Council were advised that the applicants had exercised their right to appeal to the Planning Inspectorate who act for the Secretary of State against North Somerset Council's non-determination of this matter.

On the 21 March 2017 North Somerset Council were directed by the Secretary of State to determine this application by 31<sup>st</sup> December 2018. Due to the volume of directions issued against North Somerset Council at that time that has not been possible, however the Planning Inspectorate have been kept informed and advised that this matter would be presented to the Committee on this date.

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 Plan EB/MOD 61**

**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 Documentary Evidence

**Appendix 5** – Consultation and Landowners Responses

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

**Document 1** – Yatton and Kenn Enclosure Award 1814

**Document 2** – Yatton and Kenn Enclosure Award Extract for Lilly Pool Road and Decoy Road

**Document 3** – John Cary's Improved Map 1832

**Document 4** – 1884 six-inch map OS Mapping

**Document 5** – 1904 NLS 6 Inch Map OS Mapping

**Document 6** – 1949 NLS 6-inch OS Mapping

**Document 7** – 1959 NLS OS Mapping

**Document 8** – Yatton Tithe Map 1841

**Document 9** – Yatton Tithe Apportionment Extract

**Document 10** – Finance Act Extract 1910

**Document 11** – 1930 Handover Highways Records

**Document 12a - f** – Definitive Map Process

## **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 if 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 against that decision to the Planning Inspectorate.

### **Conclusion**

As this report relates to the route, A-B-C, which is not currently recorded on the Definitive Map it is necessary for the Committee to consider whether, given the evidence available, that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

If the Committee believes in respect of the claimed route 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 Yatton and Kenn Parish Councils, Local members, interested parties and relevant user groups have also been included. Detail of the correspondence that has been received following these consultations is detailed in **Appendix 5.**

## **5. FINANCIAL IMPLICATIONS**

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

### **Costs**

To be met from existing Revenue Budget.

### **Funding**

To be met from existing Revenue Budget.

## **6. LEGAL POWERS AND IMPLICATIONS**

Section 53 of the Wildlife and Countryside Act 1981. The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible, within 12 months of receipt. Failure will result in appeals being lodged and possible directions being issued by the Secretary of State

## **7. RISK MANAGEMENT**

Due to the number of outstanding applications awaiting determination officers of North Somerset Council, in conjunction with the PROW Rights of Way Sub Committee have agreed a three-tier approach when determining the directed applications. A report was presented to the Committee in November 2016 which outlined a more streamline approach. This could result in challenges being made against the Council for not considering all evidence.

The applicant has the right to appeal to the Secretary of State who may change the decision of the Council (if the Council decided not to make an Order) and issue a direction that an Order should be made. Alternatively, if an Order is made objections can lead to a Public Inquiry.

## **8. EQUALITY IMPLICATIONS**

Public rights of way are available for the population to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

## **9. CORPORATE IMPLICATIONS**

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

## **10. OPTIONS CONSIDERED**

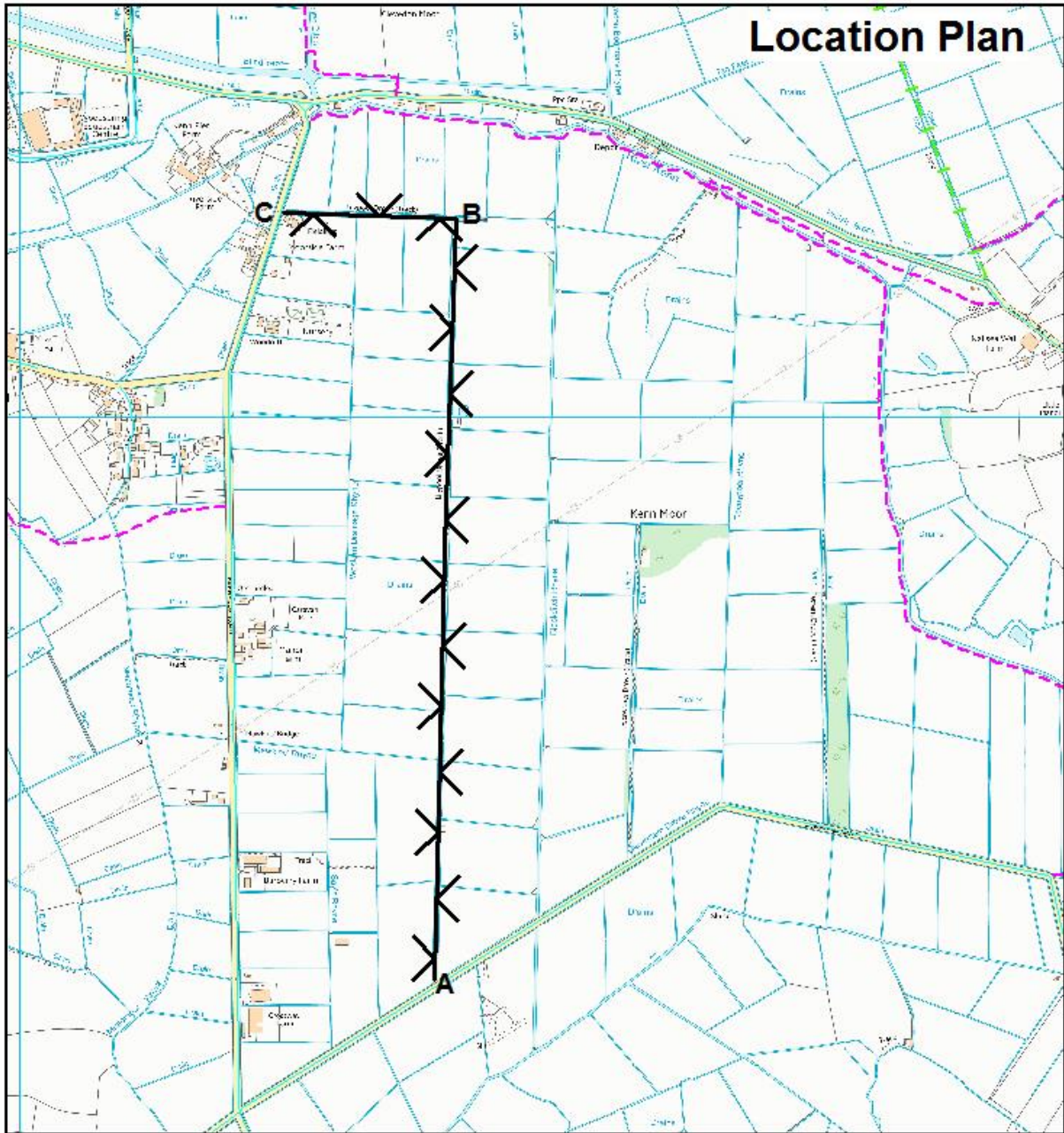
The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C as a Byway Open to All Traffic.
2. Whether the evidence supports the making of a Definitive Map Modification Order for the route A-B-C as a Restricted Byway.
3. Whether the application relating to the route A-B-C should be denied as there is insufficient evidence to support the making of any Order.
4. If the Committee accepts the recommendation of the Officer that an Order should be made for A-B-C as a Restricted Byway they are asked to authorise the confirmation of the Order if no representations or objections are received.
5. That it is understood that if objections are made, the Order will be forwarded to the Secretary of State for determination. If this happens, subject to the Officer being content that there was no significant change to the balance of evidence; the Council will support the Order at any subsequent Public Inquiry.

### **AUTHOR**

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

**BACKGROUND PAPERS:** - Public Rights of Way File Mod 61



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

**Mod 61 Lilypool Drove Kenn  
Claimed Byway Open to all Traffic.**



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



Scale 1:12,500   
Date 18 December 2018  
Grid Ref: ST4268  
Map No. EB/Mod 61  
Claimed BOAT A-B-C  


## The Legal Basis for Deciding the Claim

1. The application has been made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and then keep the Definitive Map and Statement up to date, then making by Order such modifications to them as appear to be required because of the occurrence of certain specified events.
2. Section 53(3)(b) describes one event as, "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway". See paragraph 4.

Subsection 53(3) (c) describes another event as, "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (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"

The basis of the application in respect of the Byways 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 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 13 January 2005 from Woodspring Bridleways Association (“The Association”). The basis of this application is that the route shown on the Location Plan should be recorded as a Byway open to all Traffic. The application consisted of completed forms and a plan, no evidence was submitted only reference on these forms to the Enclosure Award.

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

1814 Yatton and Kenn Enclosure Award

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

This matter is currently recorded on the Definitive Map Register as Mod 61.

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

2. The route being claimed commences at its junction with the adopted highway known as Claverham Drove, Point A and proceeds to the north for approximately 1740 metres to Point B. The route then continues west for a further 393 metres to Point C, where it meets its junction with the adopted highway known as Kennmoor Road. The total length of this route 2133 metres.
3. This claimed Byway Open to all Traffic is illustrated as a black bold broken line with ‘v’s’ at intervals on the attached Location Map (scale 1:15500).



### Analysis of the Applicants Evidence

The application submitted by the applicants is supported by documentary evidence suggested by the applicant. The route is illustrated A-B-C on the Location Map (Scale 1:15500).

#### **Yatton and Kenn Enclosure Award (1814) North Somerset Council**

The Applicant has referred to the Yatton and Kenn Enclosure Award dated 1814. The Plan attached within the award illustrates the claimed route A-B-C as an enclosed through route for its full length. The map also refers to the route as Lilly Pool Road from Point A-B and Decoy Road from Point B-C. These routes are described in the Enclosure Award as;

Page 8 – ‘**Lilly Pool Road** – One Private Carriage Road of the breadth of twenty-five feet beginning at a place in Claverham Road in Kenn Moor aforesaid marked on the said plan with the Roman letter C and extending Northward to the Decoy Road hereinafter mentioned to a place marked on the said plan with the Roman Letter D which Private Carriage Road is therein described by the name Lilly Pool Road’.

Page 9 – ‘**Decoy Road** – One Private Carriage Road of the breadth of twenty-five feet commencing at a place in Kenn Moor Road aforesaid near Kenn Pier marked on the said Plan with the Roman Letter K and extending Eastward to a place marked on the said Plan with the Roman Letter L which Private Carriage Road is therein described by the name of Decoy Road’.

In addition, between Point A and B of the claimed route, in this case points ‘C-D’, there is a bridge labelled as Lilly Pool Bridge which crosses Mawkins Drain. In this award this is described as;

Page 11 – ‘**Lilly Pool Bridge** – One other stone arched bridge in Lilly Pool Road and over Mawkins Drain marked on the said Plan with the Roman Letter I and called Lilly Pool Bridge’

Despite reading the Enclosure Award no evidence has been found to support the laying out of these routes at twenty-five feet. The Award is quite clear that Public Roads were to be laid out at thirty feet.

The map and description of the claimed route is attached in **Documents 1 and 2**.

#### ***Additional Evidence***

#### **John Cary’s Improved map of England (1832)**

The applicant has referred to this document which demonstrates routes running through North Somerset. From this plan, the route A-B-C is depicted uncoloured but connecting to other routes which are now known to be minor highways. A number of these routes appear to be coloured brown, those marked in this way would match routes which are major routes today in a similar manner to other existing known highways. Whilst this map assists in demonstrating that this route was in existence at this time, it does not assist in establishing its status.

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

### **Ordnance Survey Map (1884)**

The Applicant has referred to this edition of the OS Map dated 1884, whereby the claimed route A-B-C is illustrated as a through route. This route is bounded on both sides by adjoining fields like the Enclosure Award which set out this route for the use of the adjacent landowners. The route A-B-C is depicted in a similar manner to other routes which are known today to be highways. However, its depiction on this plan does not provide evidence of its status only that a through route existed on the ground.

An Extract of this map is attached as **Document 4**

### **Ordnance Survey Map (1904)**

The Applicant has also referred to this OS Map dated 1904. As detailed above the claimed route is depicted on this plan in the same.

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

### **Ordnance Survey Map (1949)**

The Applicant has also referred to this OS Map dated 1949. Again, as detailed above, this plan depicts the route the same as the other OS Map editions.

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

### **Ordnance Survey Map (1959)**

The Applicant has also referred to this edition of the OS Map dated 1959. Unlike the other OS Maps detailed above, this map depicts the route A-B-C with parallel dashed lines for its full length within solid boundary lines. It should be noted that other routes, presumably to illustrate status are illustrated with red dashed lines. Similarly, to the other maps referred to this depiction does not clarify the routes status, only that a through route existed on the ground.

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

## Analysis of Documentary Evidence

As this claim is based on documentary evidence additional documentation has been researched which is listed in chronological order. These routes are illustrated on the Location Map attached to show the claimed route.

### Yatton Tithe Map and Apportionment (1840)

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 Yatton illustrates the route A-B-C as a bounded track with many locations illustrated which would have provided access to the adjoining fields. The route is labelled on the map between A-B as Lillypool Drove and is illustrated as a through route for its full length. Between points A and B, the route is numbered '1283' and is described in the Tithe Apportionment as Lilly Pool Drove, and between points B and C it is numbered '1282' and is described in the Tithe Apportionment as Decoy Drove.

When looking at the Tithe Apportionment many routes are listed under the title of "Roads Rivers and Waste". These include Lilly Pool Drove and Decoy Drove. It should be noted that these names have changed since the Enclosure Award from Roads to Drovers.

Neither 1283 or 1282 are listed in anyone's ownership, their purpose being to provide access for the owners of the adjacent fields. This is still in keeping with their earlier recorded status of Private Carriage Roads. Although recorded as Private Carriage Roads there is no indication upon this plan that any gates existed at either end to stop other users. This plan illustrates that this route was capable of being used, but does not assist with status.

An extract of the Tithe and Apportionment is attached as **Documents 8 and 9**.

### Finance Act (1910) Somerset Record Office

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

Unfortunately, I only have only access to the plan that shows the section between Points B-C, the route is depicted in the same manner to that shown on other maps previously looked at. What should be noted is that the differing colouring around the adjoining fields does not extend into either of these routes. It can therefore be presumed that neither Decoy Drove or Lillypool Drove were considered eligible for Tax. This assumption could imply that these routes may have had the appearance of a public highway. This assumption can be followed by looking at other routes excluded from the neighbouring colouring which today are adopted highways such as Kenn Moor Road next to point C.

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

### **Handover Map (1930) North Somerset Council**

These Handover maps, which were drawn up in 1930 on an 1887 map base. The purpose of these documents was to illustrate routes which were public highways maintained by the local authority. These were produced when responsibility for the maintained highways passed from Somerset County to Avon County. As can be seen routes are coloured according to their differing category, Red being main routes, blue being secondary routes and yellow minor highways.

At point A Claverham Drove is coloured brown which depicted that road to be an Unclassified Road. Similarly, at point C Kenn Moor Road is coloured blue indicating that it was regarded as a secondary route.

The route A-B-C is not coloured in anyway. This document would suggest that this route was not being maintained by the local authority. Although this document does not specifically assist with the status of the claimed route A-B-C it does assist in confirming that it was not being maintained as a Public Highway. This does not however, preclude that public use was not being made of it.

An extract of this plan is attached as **Document 11**.

### **Definitive Map (1956) North Somerset Council**

The Definitive Map process was carried out over many years going through various phases which involved the area being surveyed by local people (Parish Survey) and advertisements being placed detailing that maps were being held on deposit for public viewing. This process was carried out through a Draft, Draft Modifications and Provisional stage before the Definitive Map was published with a relevant date of 26 November 1956. Any objections about routes that were included or routes that had been omitted were considered by Somerset County Council and amended if considered relevant.

Throughout the definitive process the claimed route A-B-C has not been marked or illustrated for inclusion upon the Definitive Map. This would seem to indicate that the local people who produced the Survey Plans did not consider that any public use was being made of it.

All the different stage maps looked at show the claimed route starting on Claverham Drove (point A) and following the route for its full length to its junction of Kenn Moor Drove (point C). The route itself is illustrated to be an enclosed route aligned with trees allowing access to the adjoining fields and connecting to routes which are now recorded as adopted highways.

Extracts of these maps are attached as **Document 12a - f**.

## Consultation and Landowner Responses

### Consultation Responses

Pre- Order Consultation letters were dispatched on the 28 March 2018 to local user groups, utility companies, known landowners and parties who had expressed an interest to the notices that had been placed on site.

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

<b>Name</b>	<b>Objection or Supporter</b>	<b>Comment</b>
Bristol Water	No Objection	We confirm that we have no objection to the proposed stopping up modification order at the above address.
Wales & West Utilities	No Objection	According to our mains records Wales & West Utilities has no apparatus in the area of your enquiry. However, Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.
Atkins Telecoms	No Objection	Please accept this email as confirmation that Vodafone: Fixed does not have apparatus within the vicinity of your proposed works detailed below.
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 and envisaged in the immediate future.
National Grid and Cadent Gas	No Objection	Searched based on your enquiry have identified that there is no record of apparatus in the immediate vicinity of your enquiry. Cadent and National Grid therefore have no objection to these proposed activities.
Ms E Bang	Objection	<p>I am concerned about allowing mechanised vehicles through this area as the land is used for grazing. How can you assure me that gates will not be left open and animals not upset b an unfamiliar throughput of traffic?</p> <p>The land in question belonged to my Gt Grandfather x4 generations Isaac Stuckey b.1787 of Kingston Seymour and has been passed down through the generations to me and other family members. It has been rented out to other family members and his next of kin for the last 50 years and I feel allowing mechanised vehicles other than those used by them for the purpose of their farming would be of great concern. We already have had to agree to extra Pylons on the land, it seems this would be a further encroachment. I don't understand why the status quo has to be changed after so many years. A footpath is fair, but cycles and other mechanised vehicles makes you question who might use the access if permitted. It would add a burden to the farmer if he had to worry about gates being left open and the safety of his stock. You say it was a historical route – this I suggest was due to access for those farming in the area not for the wider public's general access. As I mentioned I would not object to a foot path if this was in agreement with other family members</p>

who have a shared interest. I look forward to hearing your view regarding my objections.

Openreach	No Objection	Openreach Ltd plc does not appear to have plant in the area of your proposals. I enclose one copy of BT plan for that area, showing the approximate position of BT apparatus.
Mr J Dembrey	Objection	I write as a landowner of a field adjoining Lilypool Drove and wish to object most strongly to any change in the classification of Lilypool Drove. The lane has always been used by the landowners for access, movement of animals and is not a public right of way or a bridleway. Our land is designated as a Triple SI which would be irrevocably damaged by uncontrolled use by bikers, green laners etc. I understand each landowner is responsible for the section of drove adjacent to his land. To open up the drove to motor vehicles would put an unfair financial burden on the landowners to maintain an access for the pleasure of others. I request the rights of way sub-committee take these points into consideration when making its decision.
Mr & Mrs Pike	Objection	I write in connection with the above application. I have examined the map and I know the drove well as we live right by it. I wish to object strongly to the change to open to all traffic. This drove is by our dairy farm and home. The Lilypool drove is our only access between our farm and land which we graze our cattle on and farm. Opening this byway would cause use severe disruption, problems and distress for us and our animals. We regularly move our cattle along Lilypool Drove and require this to be safe, by opening it up to all traffic will cause disturbances to our way of farming and cause distress to our livestock. There is also a lot of wildlife that live up Lilypool Drove and by giving access to all traffic will also disturb this lovely haven and habitat for wildlife and birds. Furthermore, some of the land adjacent to the Lilypool Drove is also (SSSI) A site of Special Scientific Interest area.
D Mallinson – Green Lanes Protection Group	Comments	<p>I'm a bit confused about which parishes Mods 61 and 63 affect. Your online register shows the parish affected as Claverham but your consultation letters say Kenn. My reading of current Ordnance Survey mapping is that both applications affect both Kenn and Yatton parishes.</p> <p>The applications Mods 61 and 62 are to add byways open to all traffic (BOATs) and Mod 63 is to upgrade a footpath to bridleway. However the intended effect of Mod 63 is shown on your online register as upgrading to BOAT, so I am considering the effect of the NERC Act 2006 on all three.</p> <p>None of these applications can qualify for exemption of unrecorded public motor vehicular rights under section 67(3) of the NERC Act because they were all made after the relevant date (20 January 2005), cited in sections 67(3)(a) and 67(4) of the Act.</p> <p>There is no evidence that these applications qualify for exemption under section 67(2) of the Act.</p> <p>If North Somerset Council determines that any of these routes have public vehicular rights, they should therefore become restricted byways, not BOATs.</p>
Mr & Mrs Clark	Objection	I write to express my husband's and my concerns in relation to the above. We note that this is a long ongoing matter and that your Council have to make a decision by the 31 December

2018. As mentioned to you on the telephone, this is a particularly beautiful drove which is very old and, in fact, was the original access way to Manor Farm before Kenn Moor Road was established. It has been used by landowners for many many years to access their land on the moors. It has an abundance of wildlife and natural vegetation and is also part of an SSSI area. It is an incredibly peaceful area in the ever-encroaching urbanisation culture.

Whilst we appreciate that the Bridleways Association wish to have this drove registered as a Byways Open to All Traffic, we are particularly concerned at the description "can be used... by mechanically propelled vehicles".

We expressed our concern to you as to what this could mean and the implications to us as adjacent landowners and residents on Kenn Moor. It would be an absolute travesty to this beautiful part of the Moor if it was misused by people. You did indicate that if anti-social behaviour was apparent, the Council would normally step in and remedy the situation by the introduction of gates etc. We would very much hope that you would support any concerns that we would have. We would also mention that there is a culverted ditch on this drove which is a main waterway to the New River. This had to be re-done a few years ago because the bridge was getting weaker. The local Drainage Board arranged the works but one or two of us as landowners who preserve and look after these areas of the Countryside and we would hope that all users of these areas would treat the same with the respect it deserves. The drove is used on a minor level by horse riders because, unfortunately, most of the roads leading into this area, in particular, Kenn Moor Road are very fast and dangerous for horse riders. We, therefore, hope that you would consider this application carefully and any implications that it might have on this lovely natural piece of the Countryside.

E Wade –  
Kenn Parish  
Council

Objection

This is a farm track created for access to fields. It should be noted it is very wet in places and if designated a Byway Open to All Traffic could be damaged by overuse/misuse by recreational off-road vehicles.

Mrs L Bye

Objection

I just wanted to summarize my concerns to the proposed byway in writing, and so that you have a formal record of my opposition. Both my husband and myself have found this application to be frustrating and stressful, mainly due to the council failing to notify us the correct manner. It is increasingly hard to run an efficient and profitable farming business, and the complications that an open byway would bring is not just stressful but could also impact on our business. I think it's only fair that the application process is re-started to ensure all parties are contacted and given enough time to respond to this application.

My main concern is the damage that mechanically propelled vehicles could cause. The erosion to a track that is already poor in places would impact on farmers accessing their stock and moving stock safely along the track. Lilypool drove has many badger sets which are in use. This has weakened and caused damage to the track. Mechanically propelled vehicles will cause more damage to track. I hope North Somerset Council have the resources to maintain the track if damage was caused? The use of mechanically propelled vehicles would also have devastating effects on the wildlife, including otters which have been spotted crossing the track.

I also have concerns about how the track will be abused. We already have to clear up large amounts of litter, deal with fly-tippers and even burnt-out vehicles on our land. Making this track accessible for mechanically propelled vehicles would in

no doubt add to the this problem. I am also concerned that members of the public may stray in to fields, possibly putting themselves or livestock such as sheep at risk of injury, and of course leaving gates open. This is an issue we already have deal with regularly.

I can confirm Lilly Pool Drove track has been used for many years as bridle path; I've been riding along there for over 30 years. I regularly see other horse riders and dog walkers, and have no problem with them doing so as long as they are respectful to both the environment and the needs to local farmers.

G Plumble –  
Green Lanes  
Protection  
Group

Objection

I object to these applications. As Mrs Mallinson says, and I endorse:-

I'm a bit confused about which parishes Mods 61 and 63 affect. Your online register shows the parish affected as Claverham but your consultation letters say Kenn. My reading of current Ordnance Survey mapping is that both applications affect both Kenn and Yatton parishes.

The applications Mods 61 and 62 are to add byways open to all traffic (BOATs) and Mod 63 is to upgrade a footpath to bridleway. However the intended effect of Mod 63 is shown on your online register as upgrading to BOAT, so I am considering the effect of the NERC Act 2006 on all three.

None of these applications can qualify for exemption of unrecorded public motor vehicular rights under section 67(3) of the NERC Act because they were all made after the relevant date (20 January 2005), cited in sections 67(3)(a) and 67(4) of the Act.

There is no evidence that these applications qualify for exemption under section 67(2) of the Act.

If North Somerset Council determines that any of these routes have public vehicular rights, they should therefore become restricted byways, not BOATs.

Miss A Bye

Objection

I am contacting you to oppose and comment on the application of modification to Lilypool Drove, Kenn. Apologies for the late opposition but I was only made aware of this application on Tuesday 12th June 2018. I was very surprised to learn of this application from a neighbouring farmer as I am the joint owner of the first three fields on the along the drove at the Kenn Pier end. I am very disappointed that North Somerset Council failed to contact me, or my brother, Thomas Bye of Kenn Pier Farm. My parents, Stephen and Lynne Bye, also of Kenn Pier Farm, were also not contacted regarding this application, and they own the majority of land along the first half of Lilypool Drove. You have stated in your letter (which I only have a copy of) that it is your practice to write to all adjoining and interested parties. As you have failed to do this, I request the application process is re-started ensuring all adjoining parties and interested parties are contacted and given sufficient time to consider and comment on the application.

I am opposing the application due to the negative impact it will have on the flora and fauna found along the Drove, and negative the impact it will have on the farmers that use the Drove for access and livestock movements.

As a zoologist, I am very surprised that this SSSI area has been selected to turn in to a byway open to all traffic including mechanically propelled vehicles. Due to the nature of the wet moorland, and the sensitive way the local farmers have been manging the land, Lilypool drove is a valuable haven for many species. We, along with many other local farmers and neighbours, regularly observe rare species such as barn owls,



otters, voles, grass snakes and numerous bat species along the drove. The increase in noise, disturbance, pollution and erosion of the track will unquestionably have a negative impact on biodiversity of the site. The drove is also home to many badger setts, the entrances to which are clearly on the track itself. Due to the setts, the Drove track is quite unstable in places. As I'm sure you are aware, badger setts are protected from disturbance or destruction under the Protection of Badgers Act 1992.

The Drove is currently being used as access drove by several local farmers. This means that cattle and sheep are regularly moved along the track, and farm equipment regularly moves along the drove. The drove needs to be kept clear to ensure that farmers can access their livestock, and provide a high level of welfare, including a clear route for veterinary access. It is also a concern that with the increase in rural crime across the South West, this secluded drove will become a magnet for crime such as sheep theft and fly-tipping. We have had ongoing problems with fly-tipping, especially at the Claverham end of the Drove, and we are concerned that the byway will make it easier fly-tippers to abuse the route.

We invite you to visit the site and learn more about the impacts the proposed byway, especially from mechanically propelled vehicles, may cause. We are not opposed to pedestrians and horse riders using this route as many already do, and do so in a respectful way. However, I am slightly confused to learn (again, I have not been contacted even though route is through fields that I own) of another application for a bridle path from Kenn Pier to West End Nailsea. If Lilypool Drove is already being used as a bridle path, is there any need to open a route over farm land.

Mrs A Olsen      Comment

Thank you for your letter confirming that you will extend the consultation date re the above and that you are happy to come and discuss the matter with concerned land owners.

As you will be aware Kenn Moor has SSSI status. We have a plethora of wildlife including many protected species such as bank voles and newts. Land owners have always been very careful not to disturb these creatures.

With regard to WBA's request that this is a historical route dating back to 1815, I was under the impression that this land was flooded then and would have been virtually impossible to have been used as a bridleway. Perhaps you will be able to clarify this when we arrange a meeting with you.

Mr D Ridley      Objection

Please accept this e-letter as comments for the above application.

It is reasonable to accept that the route Lilly Pool Drove is the route defined as a Private Road in the Land Enclosures Act of 1815, this Private Road led to another Private road called Decoy Road.

The extract from the original document I attach is clear and unambiguous, under the heading of "Private Carriage Roads, Bridleways and Foot Paths" and was clearly never set out as a Public right of way only a Private right of way for the land owners to gain access to the various fields along the way and I believe it is still required to this day, and to turn this Private Road into a BOAT is totally unacceptable to all relevant land owners that are affected.

Anyone claiming the Enclosure Act should be interpreted differently suggest they are inexperienced, lack the required knowledge, or have an hidden agenda. I strongly object to this application.

## Summary of Evidence and Conclusion

### Summary of Documentary Evidence

Taking all the documents researched in Appendix 3 and 4 into consideration the route A-B-C has been illustrated upon these maps since 1814 and continued to be called Lillypool Drove. However, the fact that the route A-B-C is depicted does not confirm status.

In 1814 the Enclosure Award process set Lillypool Road and Decoy Road as Private Carriage Road for the use of the Owners and Occupiers. Such recording as Private Carriage Roads suggests that at that time the route provided access to adjoining fields but was not considered a public highway.

The other maps relied upon by the applicant also illustrate the claimed route in its entirety as a through route capable of being used. However, this does not assist in establishing its status.

The additional documentation looked at by North Somerset continues to show the claimed route A-B-C as a through route unobstructed.

The Tithe process describes this route as Lillypool Drove and Decoy Drove, different to that listed in the Enclosure Award. These were listed under a heading of Roads Rivers and Waste. This would seem to suggest that the appearance of these routes had changed leading the producer of the Tithe to believe them to be like other roads listed whether previously listed as Public or Private Carriage Roads in the Enclosure Award.

From the Finance Act plan obtained the section B-C is excluded from the adjoining field, therefore not eligible for a tax to be applied. This is a practice which some would suggest meant this route could have been a highway, the status of which unknown.

The 1930 Highways Records have not illustrated this route at all when routes maintainable by the local authority were recorded for handover to Avon County Council. Whilst this document confirms that the authority did not regard this route as a Public Highway it cannot be ruled out that it wasn't being used.

The Definitive Map process did not record this route at all nor did anyone challenge the fact it was not recorded. This would suggest that until 1950 the route A-B-C was regarded as a Private route by the parties undertaking the survey. Although the Definitive Map is regarded as the legal record of routes regarded as public rights of way the fact that this route is not recorded on the Definitive Map does not preclude evidence being submitted which would have shown that it was capable of being used. Similarly, evidence of use since the Definitive Map's relevant date can establish this route under Common Law. If it is shown that any landowner has known of use being made and taken no action to stop such use, then this is regarded as deemed dedication for that use.

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

In addition to the documentary evidence, when looking at this route on the ground it is not hard to visualise, that the route A-B-C would be capable of having been used in the past as a non-metalled route which could have been used by most modes of transport of the time, namely pedestrian, horses and horse and carriage.

The claimed route A-B-C has been consistently illustrated in a similar manner to the roads that it connects with suggesting that the route A-B-C could be of a similar status. However, over time this route has ceased to be considered in that way where other routes have been maintained by the local authority, this one has been maintained by the landowners. This does not however remove any public rights which may have once been established.

Based upon all the evidence within this report, the Officer feels that sufficient evidence has been considered to show that the route A-B-C has been in existence and capable of being used by all modes of transport without obstruction. It is therefore reasonable to allege that the route A-B-C should be recorded as a Byway open to all Traffic. Having reached that decision, it is necessary to consider this application against the requirements of the Natural Environment and Rural Communities Act 2006.

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

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

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

## **Consultation Responses**

As detailed within Appendix 5 a total number of 17 responses were received to our Pre-Order Consultation. Most of these letters are expressing concerns regarding vehicular access, making comment on the application of relevant legislation and the six utility companies confirming no objection. The objections received relate to concerns regarding the claim for a byway, the impact that opening this route up would have upon the environment such as suitability and that this area is a SSI. Three of these submissions imply that this route is already being used by horse riders, a fact which has been observed when visiting the site.

Therefore, based upon the evidence from the responders, whilst no public vehicular activity has been witnessed, it is acknowledged and accepted that the route A-B-C has and still is being used by horse riders. There is no evidence to suggest that any action has been taken by the adjoining landowners to stop any use being made of this route by the public. This acceptance by adjoining landowners should be regarded as being sufficient to suggest that this route should be recorded on the Definitive Map as a Public Right of Way.

It should also be noted that most of the land over which Lillypool Drove passes is in unknown ownership. There is a Caution registered against the section B-C by the

neighbouring landowner. Such registration does not preclude the establishment of public rights.

These landowners will have accessed their fields over the route A-B-C Lillypool Drove in some form of vehicular mode of transport. These parties may have been exercising a private right to drive along this route however whether that right is a legally recorded right can only be verified by viewing the deeds to their land.

This information is relevant in showing what the route A-B-C has been used and is capable of being used by mechanically propelled vehicles.

## **Conclusion**

This application affects a route which is not already recorded on the Definitive Map. It is therefore necessary for the application to meet the relevant test (legal event), in this case Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. This event being the discovery by the authority of evidence which shows that a right of way which is not shown in the map and statement subsists or is reasonable alleged to subsist over the land.

Having regard for that legal test the historical evidence shows that the route A-B-C has been evident on the ground since 1814 and continued to be depicted on the same alignment as a through route capable of being used with no visible obstructions. Although set out in the Enclosure Award 1814 as a Private Carriage Road, no physical evidence has been found to have prohibited the public from using the route.

Although no user evidence forms have been submitted with this application written evidence has been submitted by adjacent landowners confirming that the route A-B-C has been used and still is being used by horse riders.

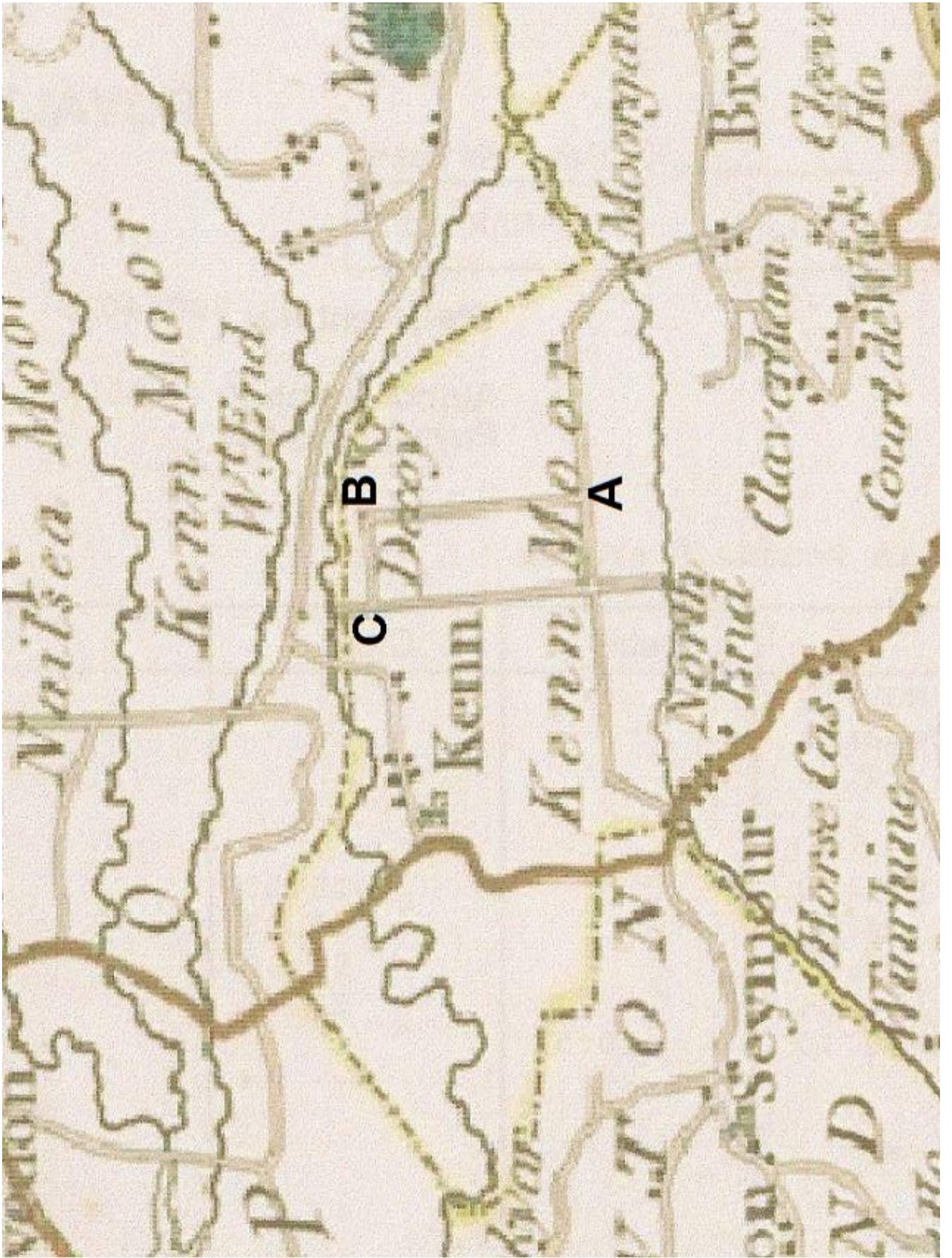
Therefore, based on the evidence detailed within this report it is felt by the Officer that a case has been made to support the claim that the route A-B-C should be recorded as a Byway Open to All Traffic. However, due to the introduction of the Natural Environment and Rural Communities Act 2006 routes can no longer be recorded as Byways Open to All Traffic unless it meets one of the exemptions listed in the Act. No suggestion has been made that it does, therefore such a depiction fails.

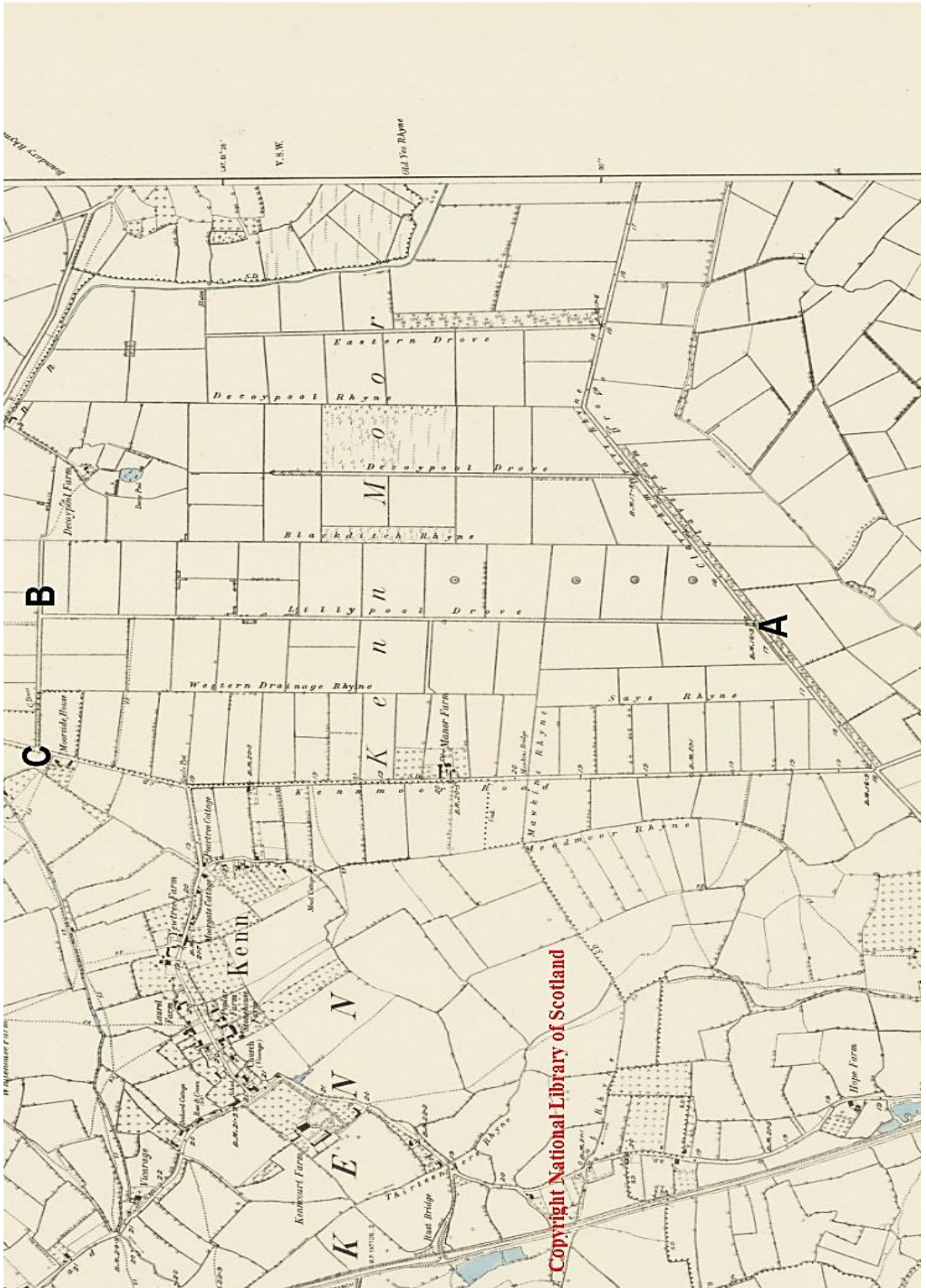
It is therefore proposed that the route A-B-C should be recorded as a Restricted Byway. This will allow this route to be used by Pedestrians, horse riders, horse and carriages but **not mechanically propelled vehicles**. As previously stated any use by the owners of the adjoining fields is to be regarded as a private right of access and therefore will be unaffected by this classification.

Document 1  
Yatton and Kenn Enclosure Award Plan 1814



<p>Claverham Road</p>	<p>One private Carriage Road, Bridleways and Foot Paths        One private Carriage Road, Bridleway and foot Paths of twenty five feet beginning at a point in        the said Road marked on the said Plan with the Roman letter A and extending Northward Eastward and        Southward to Claverham Gate marked on the said Plan with the Roman letter B to the private Carriage Road        is therein described by the name of "Claverham Road".</p>
<p>Lilly Pool Road</p>	<p>One private Carriage Road of the breadth of twenty five feet beginning at a point in Claverham Road in the        Road aforesaid marked on the said Plan with the Roman letter C and extending Northward to the Decoy Road        therein mentioned by the name of "Little Pool Road".</p>
<p>Poullets Road</p>	<p>One private Carriage Road of the breadth of twenty five feet beginning at a point in the said Claverham Road at        marked on the said Plan with the Roman letter D and extending Northward to a point marked on the said Plan        with the Roman letter E to the private Carriage Road is therein described by the name of "Poullets Road".</p>
<p>Decoy Road</p>	<p>One private Carriage Road is therein described by the name of "Jaylors Road"        near the said Decoy Road of the breadth of twenty five feet commencing at a point in the said Decoy Road aforesaid in        the said Plan with the Roman letter F and extending Northward to a point marked on the said        Plan with the Roman letter G to the private Carriage Road is therein described by the name of "Decoy Road".</p>

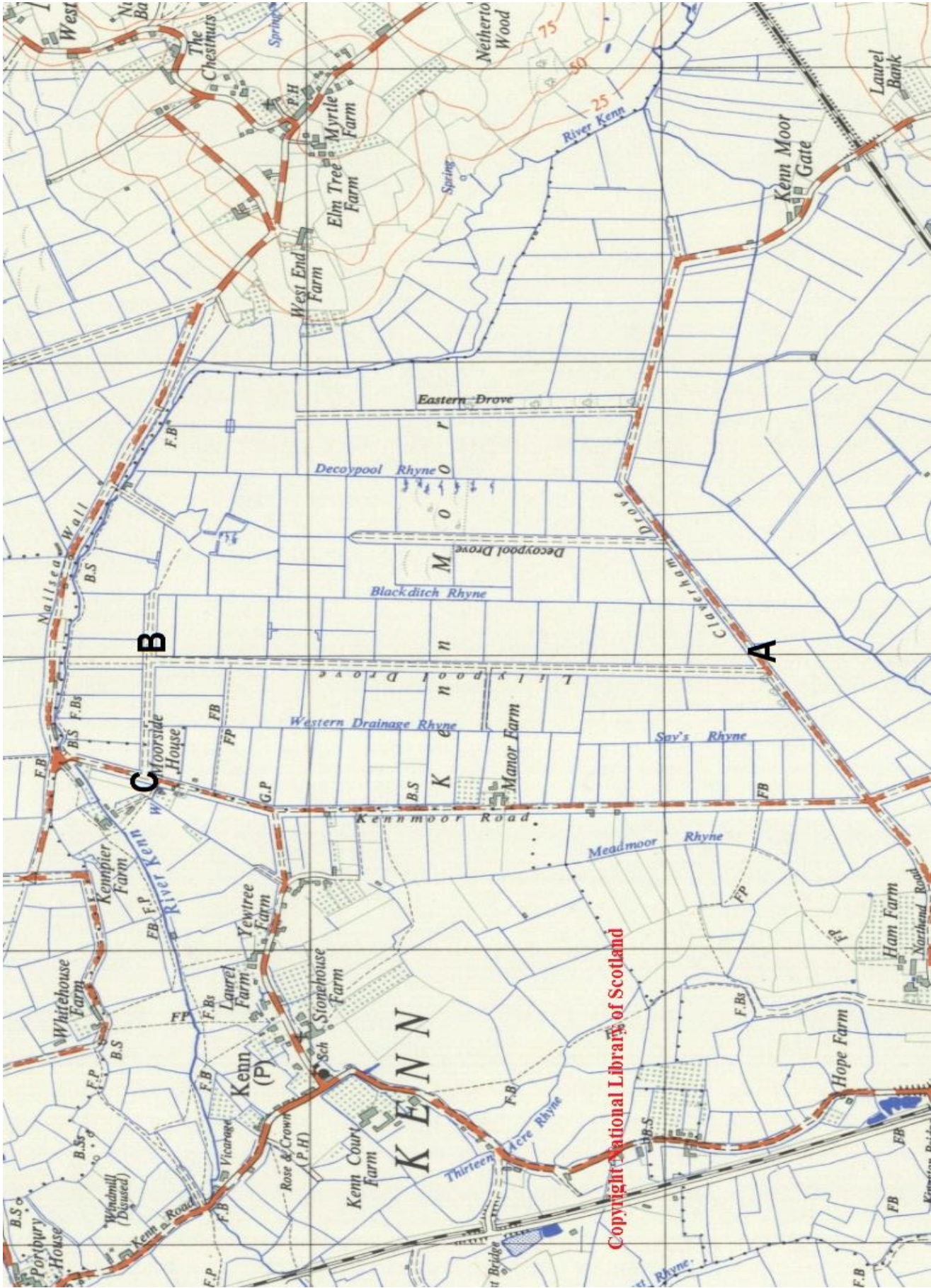








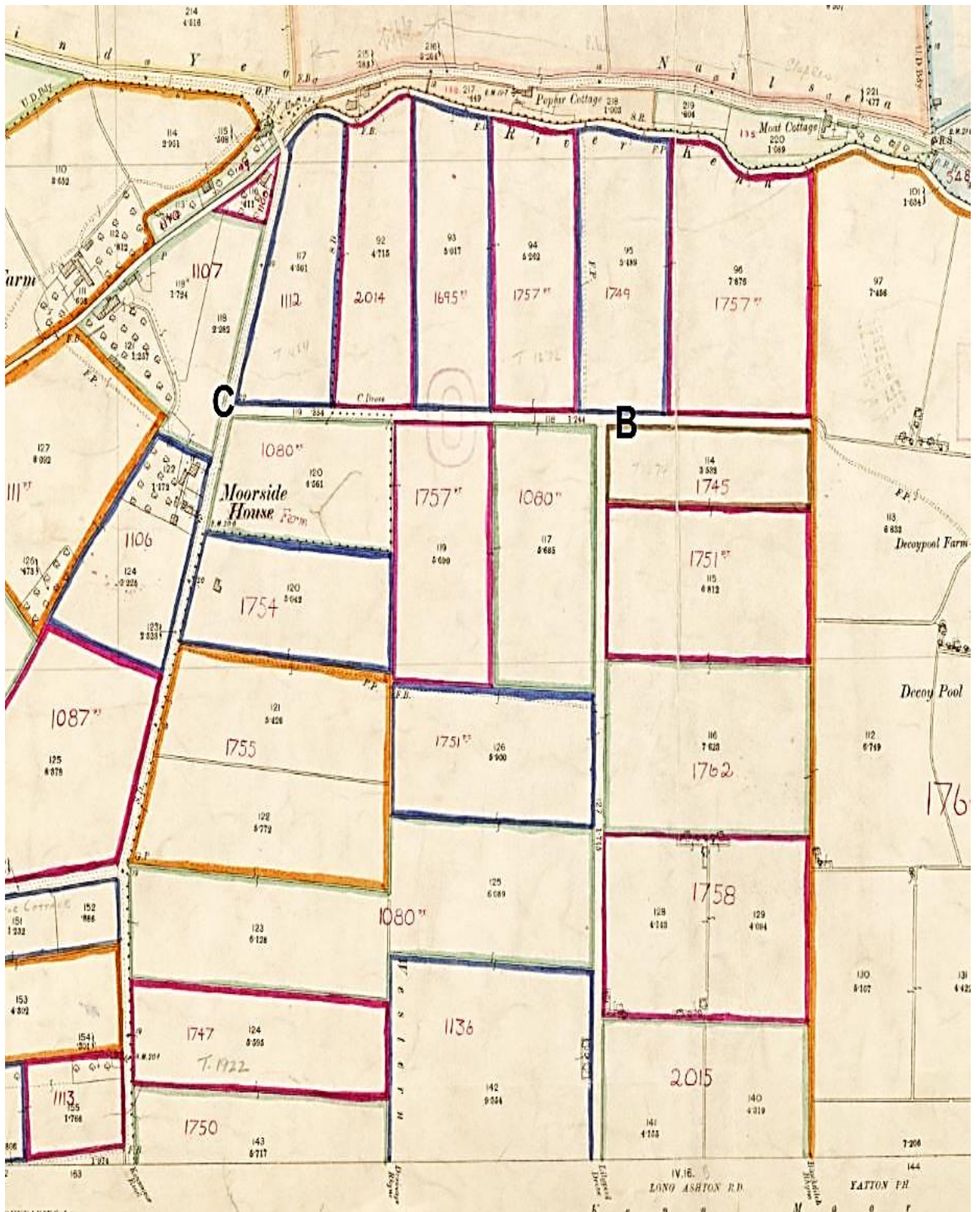




Document 8  
Yatton Tithe Map 1841



LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION or LANDS AND PREMISES.	STATE or CULTIVATION.	QUANTITIES or STATUTE MEASURE.	Amount of Rent-Charge apportioned upon the several Lands, and to whom payable.				REMARKS.
						PAYABLE TO	PAYABLE TO	PAYABLE TO	PAYABLE TO	
			Roads Ruins & Waste (continued)							
			Brought forward		35 2 26					
		1183	Lane		3 3					
		1218	River		7 1 30					
		1230	Road		2 2 25					
		1231	Claverton Drove		4 2 15					
		1238	Drove Drove		1 2 36					
		1255	Drooy Pool Drove		3 3					
		1282	Drooy Drove		1 . 18					
		1283	Lilly Pool Drove		3 1 13					
		1319	Road		2 3 38					
		1329	Road		2 . 12					



BOUNDARIES, &c.  
Every parcel is numbered thus  
Its area is given underneath in Acres, this

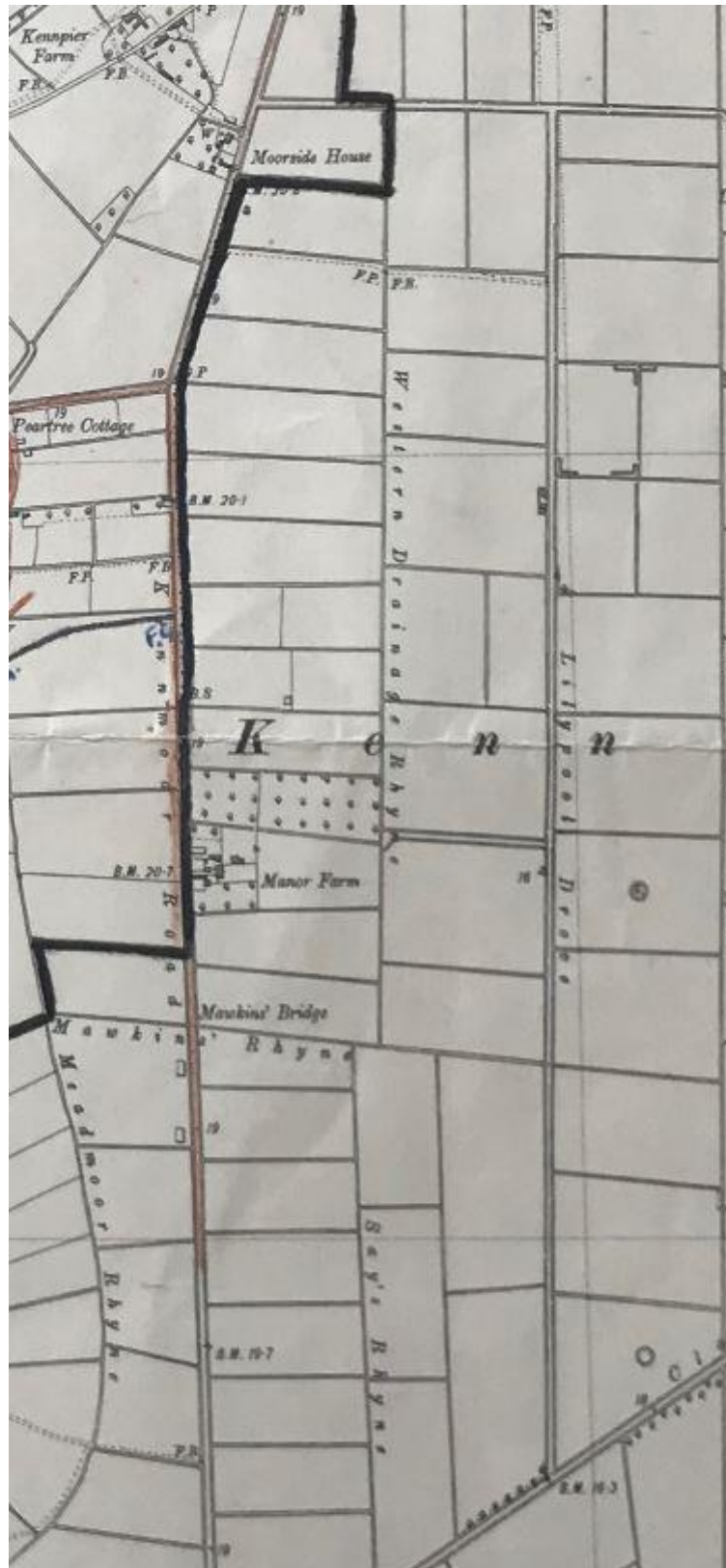
27  
1370

Printed and Published by the Director General at the Ordnance Survey Office, Southampton, 1903.  
The Altitudes are given in Feet above the assumed Mean Level of the Sea at Liverpool, which is 0.66 of a Foot below the general Mean Level of the Sea.

coll



Document 12a  
Definitive Map Process Relevant Date 26 November 1956  
Kenn Parish Survey Plan







Document 12c  
Long Ashton Draft Map



Document 12d  
Long Ashton Draft Modification Map



Document 12e  
Long Ashton Provisional Map



