

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 15 JANUARY 2019

SUBJECT OF REPORT: MOD 62 WEST BOW VIA WARFE ROAD

TOWN OR PARISH: UPHILL

OFFICER/MEMBER PRESENTING: DIRECTOR OF DEVELOPMENT & ENVIRONMENT

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

The Public Rights of Way Sub Committee authorise the relevant officer to reject this application based upon the fact that Public Carriage Roads are not recorded on the Definitive Map.

1. SUMMARY OF REPORT

This report considers an application which was made on the 5 March 2005. That application is requesting that the definitive Map and Statement are modified by adding a Byway Open to All Traffic. This application has been submitted under Section 53(2) 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 supplied one photograph showing an extract of the Weston super Mare and Uphill Enclosure Award and made a statement relating to case law. The claimed route is illustrated on the attached Location Plan EB/Mod 62 as A-B.

On the 6th 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 31st 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.

The applicants are claiming that the route of the Byway Open to All Traffic commences on the County Road West Bow Uphill and proceeds via Wharf Rd following the cycle path to point J (shown on the Enclosure Map). Members will see that the route alignments are

different. 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 62

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Analysis of the Applicants Evidence

Appendix 4 – Analysis of Additional Documentary Evidence

Appendix 5 – Conclusion

Document 1 – Application submitted by Woodspring Bridleways Association

Document 2 – Weston super Mare and Uphill Enclosure Award 1814

Document 3– Uphill Tithe and Apportionment 1840

Document 4 – Finance Act 1910

Document 5 – 1930 Highways Handover Map of Uphill

Document 6a, b, c, d, e and f – Definitive Map for Weston super Mare and Uphill 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

This report is considering the addition of a route not recorded on the Definitive Map as a Byway Open to All Traffic. Although Footpath AX31/2a runs through this area it is questionable as to whether the route being claimed is on the same alignment. Therefore, it is necessary for the Committee to have regard to the following legal test:

1. Section 53(3)(c)(i) relating to the section which is currently unrecorded is whether, given the evidence available that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

If it is decided that Footpath AX31/2a is the route being claimed then it will be necessary to consider a further legal test:

2. Section 53 (3)(c)(ii) relating to Footpath AX31/2a 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 the relevant tests have 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

For reasons given later in this report North Somerset Council have not undertaken informal consultations.

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 as is the case with this matter.

7. RISK MANAGEMENT

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

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

8. EQUALITY IMPLICATIONS

No - Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

9. CORPORATE IMPLICATIONS

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

10. OPTIONS CONSIDERED

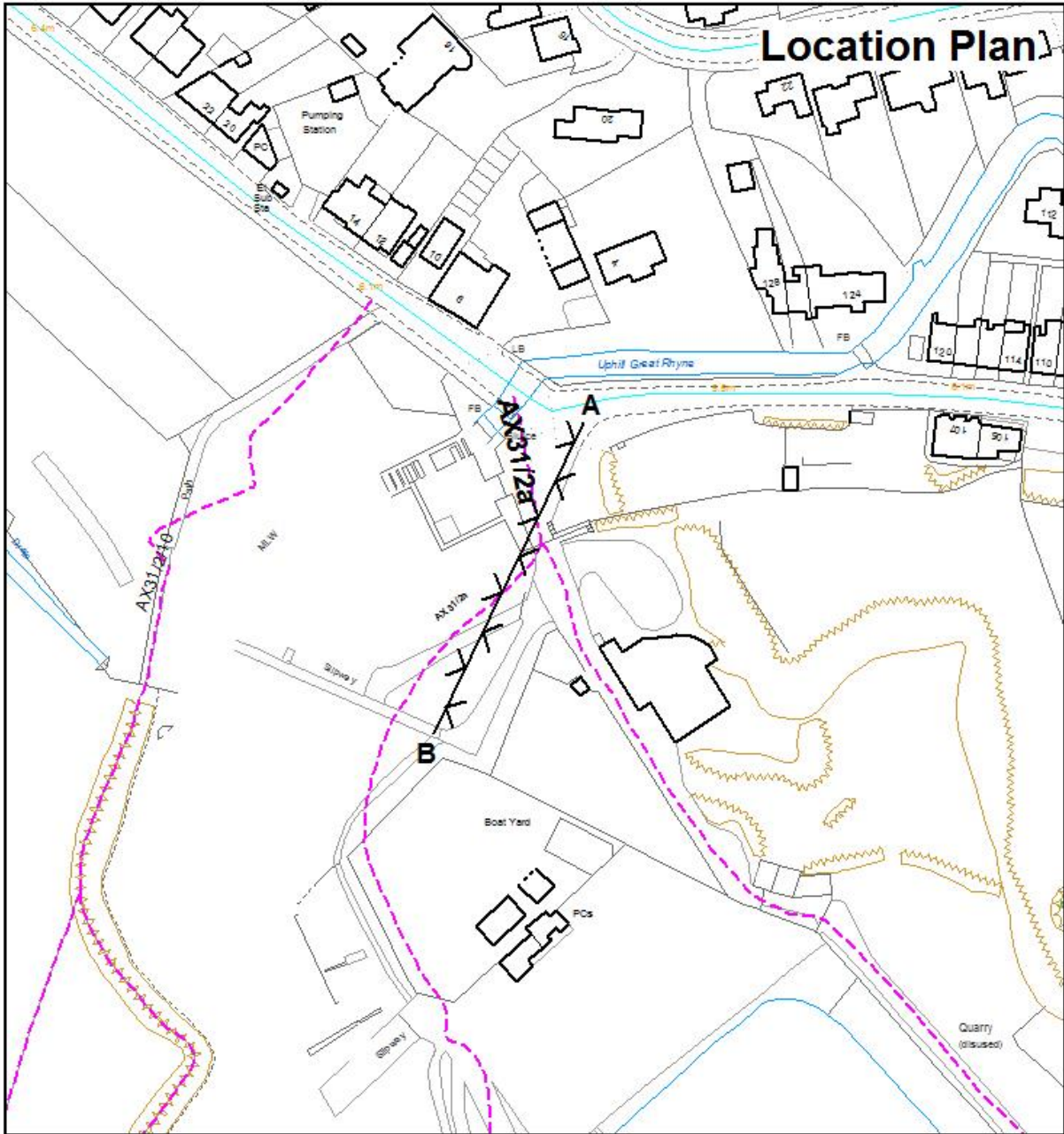
The options that need to be considered are:

1. Whether a Section 53 application is the correct process to make the changes which are being requested by the applicant.
2. Whether the application described within this report should be denied.
3. If the Committee accepts the recommendation of the Officer that this application should be refused that it is understood that the applicant has the right to appeal against the decision of the Committee.

AUTHOR

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

BACKGROUND PAPERS: - Public Rights of Way File Mod 62

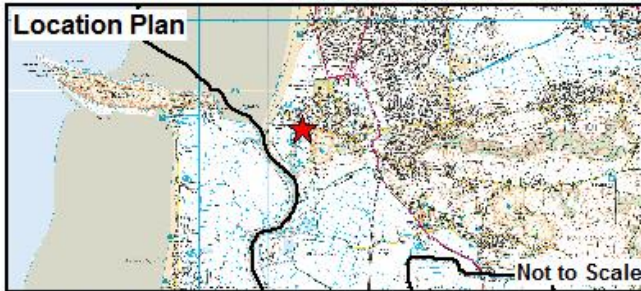


Wildlife & Countryside Act 1981 - Section 53 North Somerset District Council

**Mod 62 West Bow via Wharf Road Uphill
Proposed 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 1:1250
Date 11 December 2018
Grid Ref. ST3158
Map No. EB/Mod 62

Claimed BOAT
A B

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"
- (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 claimed Byway Open to All Traffic is that the requirement of Section 53(3)(c)(i) and (ii) has been fulfilled.

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

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

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

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

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

The Committee is reminded that in assessing whether the path can be shown to be a public right 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 5 March 2005 from Woodspring Bridleways Association (“The Association”). This application requested that a route illustrated on the Enclosure Map and described within the Enclosure Award for Weston super Mare and Uphill dated 1818 should be recorded as a Byway Open to All Traffic. The evidence which the applicants wish to rely up is that it is their belief that Wharf Road is a common way, originally for the use of the owners and occupiers of certain landholdings which cannot now be identified with any certainty. A lawful case which they have quoted is that of Throwers Case (1684 I Vent 208) and R v Saintiff (1704 6 Mod 255) suggesting that this matter follows the principles established and should now be deemed to be a public right of way or highway.

The submitted application was accompanied by one map.

The above documents will be reported on in **Appendix 3**. This matter is currently recorded on the Definitive Map Register as Mod 62.

2. It should be noted that the Council has looked at additional documentation within its records which relates to the Uphill Area. These are detailed in **Appendix 4** of this report.
3. The Byway Open to all Traffic is illustrated as a bold black dashed line with inverted “v’s” either side of the line on the attached Location Map (A-B) (scale 1:1250).

APPENDIX 3

Analysis of Applicants Evidence

The applicants have submitted this application relying solely on the Enclosure Award for the area and naming two separate case laws.

Weston super Mare and Uphill Enclosure Award 1814 (SRO QRDE 24)

The applicants have submitted one dark photograph with a Somerset Record Office reference number upon it. Upon this the claimed route has been illustrated in green which isn’t very easy to see, however I can confirm that this alignment matches that illustrated on the Location Plan A-B.

Throwers Case (1684 I Vent 208) and R v Saintiff (1704 6 Mod 255)

Although the applicant has quoted this case law, no documentation has been submitted in support.

As I do not hold a copy of either of these case laws I have only been able to research this from papers held as part of our Rights of Way Law review. They seem to have related to private ways, who would be responsible for maintaining them and the use that was made of them. Without further information it is unclear as to why the applicant considered these documents to be relevant.

The application documents have been attached as **Document 1** for information.

Analysis of Additional Documentary Evidence

To decide whether a Definitive Map Modification Order application is the correct path to follow with this matter it has been necessary to look back through documentation held within North Somerset Council offices.

Weston super Mare and Uphill Enclosure Award 1814 (SRO QRDE 24)

This Enclosure Award was produced following an Act of Parliament in 1813 entitled "An Act for Inclosing lands in the Parish of Uphill in the County of Somerset". The appointed commissioners were Gabriel Stone (who died) and replaced by John Barrow, Joseph Wollen and Young Sturge.

The route that is being claimed by the applicants is illustrated upon the Enclosure Award and titled Wharf Road.

The Enclosure Award describes Wharf Road under the heading Public Carriage Roads as "One Public Carriage Road of the width of thirty feet commencing at or near the West Bow of Uphill marked on the said Allotment Plan with the Roman Letter B and extending Southward along part of the Eastward side of the Public Wharf to a Place marked on the said Allotment Plan with the Roman Letter I and called the Wharf Road".

The Award laid out the powers granted to the Commissioners in respect of Public Roads, Private Roads, Bridleways Footways etc. In this case the Award makes reference to Public Roads which reads "And Whereas it is in and by the said recited act of the Forty first year of his Majesty's reign enacted that any Commissioner or Commissioners appointed by any Inclosure Act should and he and they is and are thereby authorised and required in the first place before he or they proceed to make any of the divisions and allotments directed in and by any such act to set out and appoint the Public Carriage Roads and Highways through and over the Lands and Grounds intended to be divided and allotted and inclosed and to divert turn and stop up any of the Roads and Tracts upon and over all or any part of the said Lands and Grounds as he or they should judge necessary so as such Roads and Highways should be and remain Thirty feet wide at the least and so as the same should be set out in such directions as should upon the whole appear to him or them most commodious to the Public and hear they further required to ascertain the same by Marks and Bounds and to prepare a map in which such intended roads should be accurately laid down and described"

The Commissioners were required to place notice of their intentions in the local press and hold a public meeting to discuss concerns and objections.

The allotment for a Public Wharf reads:

"And the said Gabriel Stone Joseph Wollen and Young Sturge agreeably to the directions of the said last mentioned Act did set out and allot as and for a Public Wharf for the use of the Public and of all and every person and persons whomsoever who might have occasion to use the same for landing loading and unloading Coals and other Goods brought in or carried out of the Port of Uphill aforesaid

All that one Piece or Parcel of Land part of Newham Warth aforesaid adjoining the West Bow containing by admeasurement two Roods and numbered 54 on the said Plan bounded

on the East by an allotment of Land numbered 55 and by the Wharf Road on the West and South by Uphill Pill and on the North by the Sea Wall”

The Enclosure Plan illustrates Wharf Road as described within the Award as between points B and I however upon closer inspection of the documents it would seem that the writer has confused points I and J. This is confirmed by the description for Uphill Church Road.

This document provides clear evidence of the existence of a route laid out as a Public Road for the use of the public which provided access to the Public Wharf.

An extract of the Enclosure Award Plan and the text quoted above is attached as **Document 2**.

Uphill Tithe and Apportionment 1840

This document covers the area of Uphill over which the claimed route A-B passes. There is no depiction of the claimed route passing through apportionment 215.

Every entry illustrated upon the Tithe Map was detailed within a document known as the Apportionment. This book provides information relating to the owner of the land, a tenant if applicable, Name and description of lands and premises, state of cultivation, statute measure and the amount paid to either the vicar or the rector. In this case Apportionment 215 reads that this was a Coal Wharf and 2s 10d was being paid to the Rector.

Whilst the map does not assist with illustrating the existence of this route it does maintain the existence of the wharf set out in the Enclosure Award.

An extract of the Tithe Plan and Apportionment are attached as **Document 3**.

Finance Act 1910

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

There is a route illustrated on the map which would have provided access to the Old Limekilns and Uphill Cavern but is on a different alignment to the route claimed. This route is shown as a double pecked line suggesting that this route passed over pasture land. This depiction would appear to match the route which is on the ground today.

At this time, it has not been possible to obtain the paperwork associated with the hereditament edged in red which carries the number 52.

This plan assists with illustrating that a route was in existence on the ground but does not assist with this claim or its status.

An extract of the Finance Act plan is attached as **Document 4**.

Handover Map of Uphill (1930) North Somerset Council

These Handover maps, which were drawn up in 1930 on an 1887 map base, illustrate a route commencing at the same location as point A. The purpose of these plans 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 map shows the initial section of the claimed route coloured yellow beginning from Uphill Rd Point A for a short distance however, unusually this route nor any others coloured on this map, have been allocated a number which may have provided more evidence as to status. The colouring of this route in yellow would imply that this route was considered as a minor highway maintained by the local authority, however it is questionable as to whether this coloured route is the same alignment as Wharf Road set out in the Enclosure Award.

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

Definitive Map for Weston super Mare and Uphill (1956) North Somerset Council

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

The 1st stage was the Parish Survey which would have been undertaken by members of the Parish or Town Council. They recorded a route upon a Parish Survey Plan and produced individual Walking Cards. Unfortunately, we do not hold a copy of the Parish Survey plan.

The walking card for Footpath AX31/2a refers to this path as FP with all other statuses crossed out. It reads *"the path starts at West end of Uphill Way, and runs along old towing path East of Uphill Pill to Borough Boundary. First 200 yards are undefined. A low stone wall must be crossed onto towing path which is on an embankment. At a point approximately 250 yards along Towing Path, a rough stile is constructed, beyond which path continues unobstructed to Borough Boundary"*.

The reverse side is signed by P J Crisp on 13 November 1951 agreed by Town Clerk on 6 January 1953 but nothing recorded for approval by Rural District Council.

A copy of this card is attached to this report as **Document 6a**.

For completeness I have also looked at the walking card for AX31/3 which appears on all the following maps to also commence on Uphill Way. It reads *"the path starts at Western end of Uphill Way and runs in a southerly direction parallel to the foot of the Quarry terminating at a group of stables. The path itself is formed of stone and gravel and well defined for a distance of 260 yards, at which point a field gate occurs. The remainder of the path is across open field which leads to old stables. At the old stables, two five barred gates must be opened into pasture beyond, where path continues undefined through a further gate to the Borough Boundary"*.

A copy of this card is attached to this report as **Document 6b**.

To present as complete a picture as possible of this process, copies of the Draft, Draft Modifications and Provisional plans held by North Somerset Council are included in this report.

The Draft Map illustrates the drawn line of Footpath AX31/2a commencing on Uphill Way and proceeding as described upon the walking card. This alignment appears to be slightly different to the route shown on the Enclosure Award. An extract of this plan is attached as **Document 6c**.

The Draft Modification Plan illustrates that no amendment was suggested when the draft map was published and advertised. An extract of this plan is attached as **Document 6d**.

The Provisional Plan (which was made available to landowners for comment) illustrates the route of Footpath AX31/2a as drawn on the Draft Plan confirming that no amendments had been proposed through the previous stages. An extract of this plan is attached as **Document 6e**.

The Axbridge Rural District Council Definitive Map for the area carries a relevant date of 26 November 1956. Footpath AX31/2a is illustrated in the same way as that shown on the Draft Map. This plan is regarded as the legal record for this footpath. An extract of this plan is attached as **Document 6f**.

The above documents 6a, 6b, 6c, 6d, 6e and 6f illustrate that the recording of Footpath AX 31/2a and AX31/3 was undertaken fully in line with the process laid down by The National Parks and Access to the Countryside Act 1949. These documents only relate to the Definitive Map Process where at the time of production the recorder felt only public footpath rights needed to be recorded. It is not clear as to when or why the initial parts of both AX31/2a and AX31/3 merged together. However, this application could be relating to the initial part of AX31/2a as shown on the Definitive Map.

Conclusion

The basis of this claim is that the applicant believes that a route shown on the Weston super Mare and Uphill Enclosure Award should be recorded on the Definitive Map as a Byway Open to all Traffic.

Whilst the claimed route A-B does not seem to have been depicted on the same alignment on any other maps since the Enclosure plan the evidence contained within the Award is strong evidence and should not be ignored.

Wharf Road was set out as a Public Carriage Road for the use of the Public for gaining access to the Public Wharf which was also being set out. Due to the location being called a Public Wharf it is reasonable to suggest that this location was already being used and that the setting out of Wharf Road was to protect public access.

Public Carriage Roads were maintained by the Parish, most of which would still be recorded as adopted highways today. Therefore, the only way for such rights that were established by setting Wharf Road out as a Public Carriage Road would be for an application to be made to the Quarter Sessions or latterly the Magistrates Court to extinguish such public rights.

The Tithe Map whilst not depicting the claimed route still illustrates that the land previously set out as a Public Wharf was now regarded as a Coal Wharf, presumably where coal was delivered to and would have needed access.

Of the other documents which have been detailed within this report the 1930's Highways Records seems to support a minor highway being in this location. The yellow coloured section on this plan commences in the same location however it should not be forgotten that Footpaths AX31/2a and AX31/3 commence in this location and that public footpaths are minor highways.

It is not unreasonable to suggest that the use and appearance of Wharf Road would have changed over time especially when this area was no longer a location where produce and products were delivered. Such a decline in use could explain as to why in the 1950's a route on a similar alignment was recorded as a Public Footpath on the Definitive Map, namely Footpath AX31/2a which is on a similar alignment to that of the claimed route A-B. However, if this route was set out as a Public Carriage Road those higher right should have been stopped up. No evidence has been located to support this action, therefore although not available Public Carriage rights would remain.

Therefore, based upon the evidence which has been looked at within this report this route is an ancient highway for use by modes of use higher than a Footpath, Bridleway or Restricted Byway namely a Public Carriage Road.

For that reason, this application should be rejected as Public Carriage Roads are not recorded on the Definitive Map.

NORTH SOMERSET COUNCIL

WILDLIFE & COUNTRYSIDE ACT 1981

APPLICATION FORM FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT

To: Rights of Way
North Somerset Council
Development and Environment Department
PO Box 141
Weston Super Mare
BS23 1AE

I/We: (i) Woodspring Bridleways Association
of:
(ii) Lambroton Farm Shipham Wincoburgh Somerset

hereby apply for an order under Section 53 (2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by (iii) :-

(a) Deleting the footpath / bridleway / byway open to all traffic* which runs

from:
to:

(b) Adding the footpath / bridleway / byway open to all traffic * which runs

from: The County Road west B.O.W. Uphill via Waste Road
to: follow the cycle path to point J on the enclosure 1818 road map.

(c) Up-grading / down-grading to a footpath / bridleway / byway open to all traffic * the footpath / bridleway / byway open to all traffic * which runs

from:
to:

(d) Varying / adding to the particulars relating to the footpath / bridleway / byway open to all traffic * which runs

from:
to:

by providing that

and shown on the map annexed hereto.

We attach copies of the following documentary evidence (including statements of witnesses) in support of this application :-

(iv) Enclosure Road map, W.S.M. and Uphill 1818 RD QRDE 24

Signed

Dated: 5/03/05

(i) Insert name of applicant(s) (iii)* Delete as appropriate
(ii) Insert address of applicant(s) (iv) Insert list of documents

(PTO)

NORTH SOMERSET COUNCIL

WILDLIFE & COUNTRYSIDE ACT 1981

FORM OF CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER

To: Rights of Way
North Somerset Council
Development and Environment Department
PO Box 141
Weston Super Mare
BS23 1AE

I/We

(i) Badspin Bindways Association
of (ii) Longbatten Farm, Shipham, Weston-super-Mare, Somerset

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in relation to the attached application.

Signed Dated: 5/03/05

NOTES FOR GUIDANCE

This certificate should only be completed when notice of the application has been served on all owners and occupiers affected by the proposal. A list of the names and addresses of all individuals notified should be included in the space provided below. Please indicate if you have been unable to identify all owners and occupiers affected by the proposal.

Notice of Application Sent To:-

1. North Som Council R.O.W. Dept.
2. Acorn Wild Life Trust 32 Jacobs Road Bristol
3.
4.
5.
6.
7.

(i) Insert name of applicant(s).
(ii) Insert address of applicant(s).



W. S. M & W. H.
1A. Q. R. D. E. 24
1818

SLIMMERIDGE WARTH

UPPER HILL

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It is a common way, originally for the use of the owners and occupiers of certain landholdings. These cannot now be identified with any certainty.

Following the principles established by *Thrower's Case* (1684 I Vent 208) and *R v Saintiff* (1704 6 Mod 255), it is now deemed to be a public right of way or highway.

THROWER'S CASE
R v SAINTIFF

DOCUMENT 2
Weston super Mare and Uphill Enclosure Award 1814



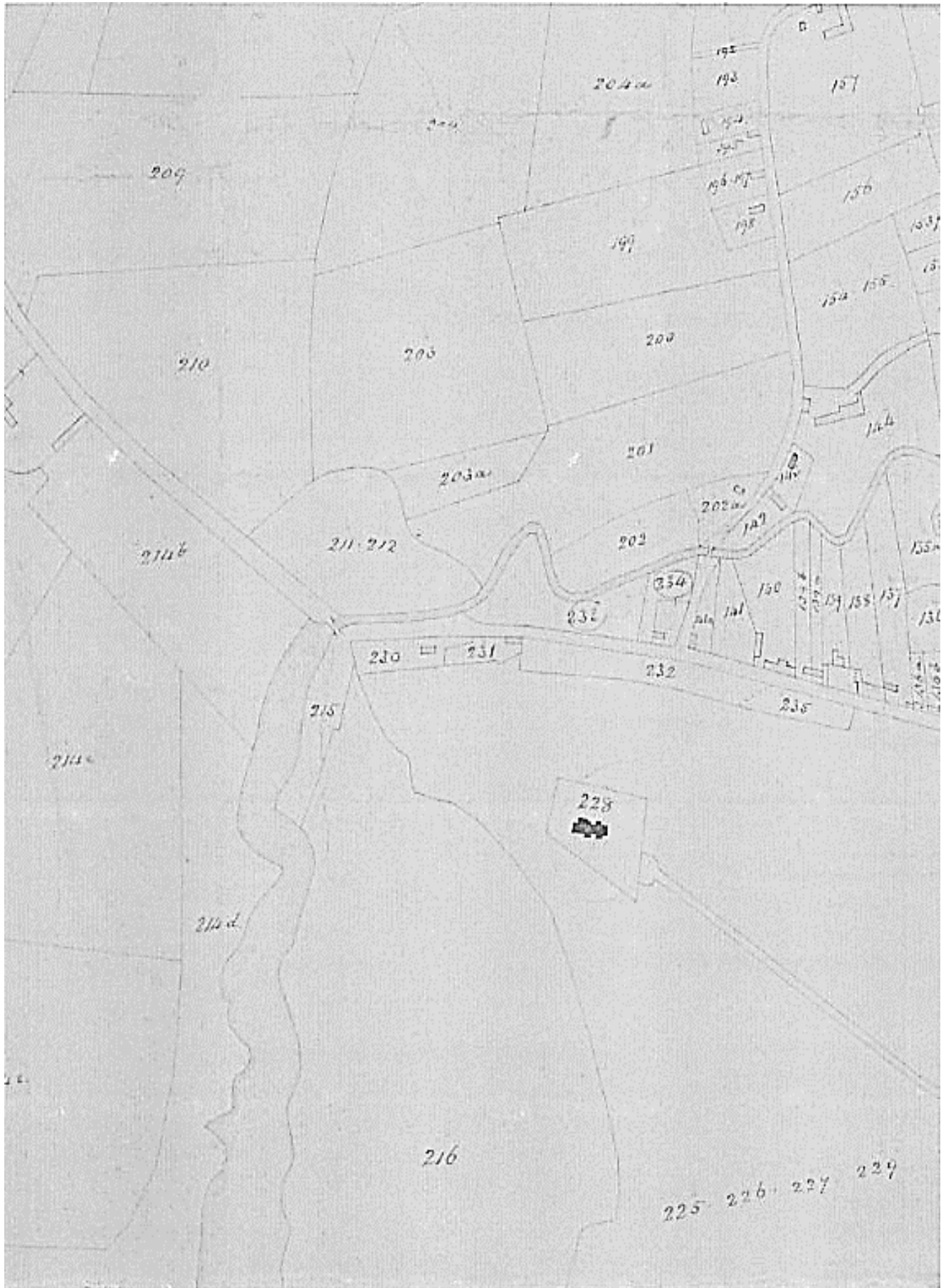
Plan

with the Roman Letter A and extending westward over west two and four lines by the side of *St. Mary's* church to *St. Mary's* Head ---
 One other Public Carriage Road of the width of thirty feet beginning at a place marked on the said allotment Plan with the Roman Letter E and extending over *St. Mary's* Head ---
 One other Public Carriage Road of the width of thirty feet commencing at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Public Carriage Road of the width of thirty feet commencing at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Public Carriage Road of the width of thirty feet commencing at or near the West End of *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Public Carriage Road of the width of thirty feet commencing at or near the West End of *St. Mary's* Head and extending over *St. Mary's* Head ---

Private Roads and Public Paths and Foot Ways

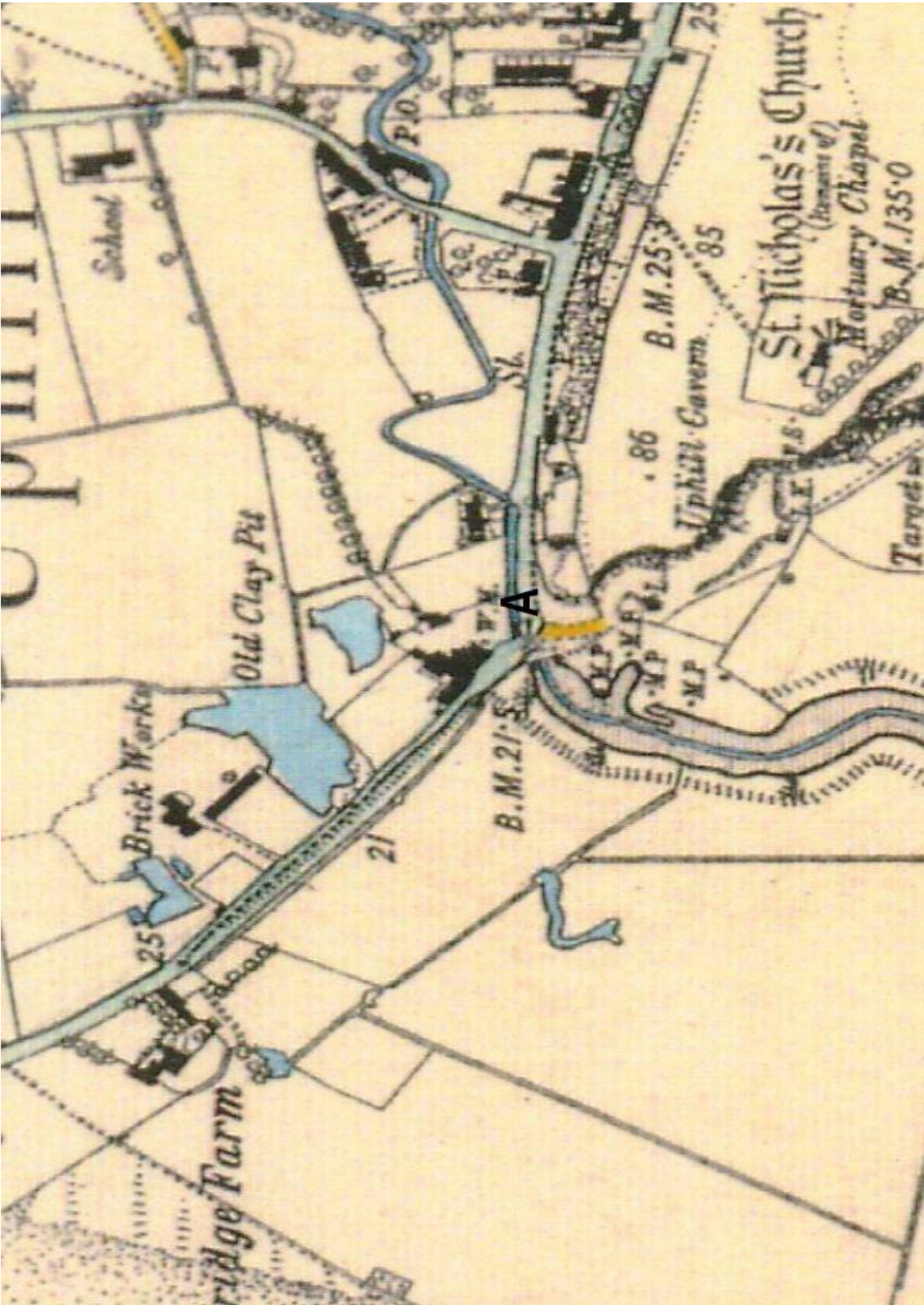
One Private Carriage Road and Public Path and Foot Way of the width of twenty feet commencing at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Private Carriage Road and Public Path and Foot Way of the width of twenty feet commencing at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Public Path and Foot Way and also a Private Carriage Way of the width of twenty feet for the use of the owners and beneficiaries of certain of the said *St. Mary's* Head and also of an other *St. Mary's* Head and which said way commences at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Public Path and Foot Way and also a Private Carriage Way of the width of twenty feet commencing at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---
 One other Public Path and Foot Way and also a Private Carriage Way of the width of twenty feet commencing at a place in *St. Mary's* Head and extending over *St. Mary's* Head ---

DOCUMENT 3
Uphill Tithe and Apportionment 1840



LANDOWNERS	OCCUPIERS	Numbers referring to the Plan.	Name and Description of Land and Premises	State of Cultivation.	Quantity in Statute Measures.	Amount of Rent Charge apporportioned upon the several Lands, and to whom payable.		REMARKS
						Payable to the Year.	Payable to the Rector.	
					A B P.	£ s d.	£ s d.	
Brookman Thomas	Thomas	26	Three acres	arable	5.3.20		1.6.0	
		45	Three acres	meadow	4.5.16		1.5.7½	
		67	Great Impium	pasture	11.2.12		3.1.2	
		53	Trunkard	"	1.2.4		5.6	
		130	Howgarden	orchard garden	2.12		5.3½	
		131	Howgarden	garden	1.0		6.2	
		132	Close	pasture	1.16		2.1	
		146	How Close	meadow	2.33		16.1½	
		93	Six acres	pasture	27.1.15		7.7.2	
					3.2.26		19	
Bridle Lane	Bridle Lane	42	Two acres	meadow	2.50		12.1½	
Brigitt Lane	Richard	203	Eight acres	meadow	5.1.13		1.11.5	
	Every George	203	Eight acres	meadow	5.1.13		1.11.5	
	John	203	Eight acres	meadow	5.1.13		1.11.5	
	John	202	Howgarden	meadow	1.0		5.9½	
	John	202	Howgarden	meadow	1.0		5.9½	
	Every George	143	Orchard	orchard	1.23		2.7½	
	John	167	Howgarden	"	1.6		1.9	
	John	55	Common meadow	meadow	1.10		1.9	
	Every George	205	Carl Close	"	2		2	
	John	214	Carl Close	"	2		2.10	

DOCUMENT 5
Handover Map of Uphill (1930) North Somerset Council



SOMERSET COUNTY COUNCIL

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

WESTON-SUPER-MARE

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :— *2a* Path shown on 6" O.S. No. :— *16 NE* Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :—

DESCRIPTION :— The path starts at

West end of Uphill Way, and runs along old towing path East of Uphill Pill to Borough Boundary. First 200 yards are undefined. A low stone wall must be crossed onto towing path which is on an embankment. At a point approximately 250 yards along Towing Path, a rough stile is constructed, beyond which path continues unobstructed to Borough Boundary.

030 yards

(Please continue on second card if necessary)

Walking Survey made by :—

(Signed)

Alley

12/1/51

Agreed by (Borough/Urban Parish Council/
Meeting)

(Signed)

Whickham

Date

6 JAN 1953

*To be signed by
Chairman/Clerk*

Approved by Rural District Council :—

(Signed)

Date

Chairman/Clerk

SOMERSET COUNTY COUNCIL

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

WESTON-SUPER-MARE

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :— 3 Path shown on 6" O.S. No. :— 16 NE Kind of Path, i.e. F.P., B.R., C.R., F.P. or B.R.F.P. :—

DESCRIPTION :— The path starts at Western end of Uphill Way and runs in a southerly direction parallel to the foot of the Quarry terminating at a group of stables.

The path itself is formed of stone and gravel and well defined for a distance of 260 yards, at which point a field gate occurs. The remainder of the path is across open field which leads to old stables. At the old stables, two five-barred gates must be opened into pasture beyond, where path continues undefined through a further gate to the Borough Boundary.

1,100 yards

(Please continue on second card if necessary)

Walking Survey made by :—

(Signed)

Albip

Date 13/11/51

Agreed by (Borough/Urban Parish Council / Meeting)

(Signed)

Albickpts

Chairman, Clerk

Date

6 JAN 1953

Approved by Rural District Council :—

(Signed)

Chairman, Clerk

Date

