

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 20 MARCH 2019

SUBJECT OF REPORT: BRIDEWELL LANE, BANWELL

TOWN OR PARISH: BANWELL

OFFICER/MEMBER PRESENTING: DIRECTOR OF DEVELOPMENT AND ENVIRONMENT

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise the relevant officer to reject this application relating to Mod 92 Bridewell Lane Christon Plantation Banwell because there is insufficient evidence to suggest that the routes shown on the attached Location Plan should be recorded as Restricted Byways.

1. SUMMARY OF REPORT

This report considers an application which was made on the 19 February 2007. That application requested that several routes, in the Parishes of Bleadon and Loxton, currently recorded as Public Bridleways should be recorded as Restricted Byways. 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 Orders be made and confirmed, would be to amend the Definitive Map and Statement for the area.

This application relates to six routes shown on the attached Location Map. B-A-F-E-D-I relates to Bridleway AX21/6. B-C-I relates to Bridleway AX21/10. D-G relates to Bridleway AX 21/1. G-D1 relates to Bridleway AX6/18. H-G relates to Bridleway AX21/1. I-J relates to Bridleway AX6/25. In addition to these three other routes are included in the application which are already adopted highways maintained by North Somerset Council, one known as Bridewell Lane, one known as Windmill Hill and the other Weston Lane. As these connect to each other the historical evidence will be presented for the routes which have been identified by lettering, no further research will be presented relating to the three adopted highways.

This report is based on historical documentary evidence only. A Location Map EB/MOD92, showing the routes being claimed is attached.

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

that are attached to this report. Members are welcome to inspect the files containing the information relating to this application, by arrangement with the Public Rights of Way Section.

Location Plan MOD 92

Appendix 1 – The Legal Basis for Deciding the Claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Analysis of the Documentary Evidence

Appendix 4 – Consultation and Landowners Responses

Appendix 5 – Summary of Evidence and Conclusion

Document 1 – Loxton Inclosure Plan 1851

Document 2 – Loxton Inclosure Award 1851

Document 3 – Loxton Inclosure Award 1851

Document 4 – Finance Act 1910 Plan 1 and 2

Document 5 – Handover Map 1930 Page 2 and 1

Document 6 – Loxton Parish Survey Plan

Document 7 – Walking Card for Bridleway AX21/6

Document 8 - Walking Card for Bridleway AX21/10

Document 9 – Walking Card for Bridleway AX6/18

Document 10 - Walking Card for Bridleway AX 21/1

Document 11 - Walking Card for Bridleway AX 6/25

Document 12 – Axbridge Rural District Council Draft Map

Document 13 – Axbridge Rural District Council Draft Map Modification Map

Document 14 – Axbridge Rural District Council Provisional Map

Document 15 – Axbridge Rural District Council Definitive Map 26 Nov 1956

2. POLICY

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

3. DETAILS

Background

i) The Legal Situation

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

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

ii) The Role of the Committee

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

to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the Planning Inspectorate who act for the Secretary of State for Food and Rural Affairs for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Planning Inspectorate.

Conclusion

As this report relates to routes, Bridleway AX21/6 (B-A-F-E-D-I), Bridleway AX21/10 (B-C-I), Bridleway AX 21/1 (D-G), Bridleway AX6/18 (G-D1), Bridleway AX21/1 (H-G) and Bridleway AX6/25 (I-J) all of which are currently recorded on the Definitive Map it is necessary for the Committee to have regard to the following legal test:

Section 53 (3)(c)(ii) 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; and;

If the Committee believes 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 Bleadon, Loxton, and Hutton 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 4**.

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

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

9. CORPORATE IMPLICATIONS

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

10. OPTIONS CONSIDERED

The options that need to be considered are:

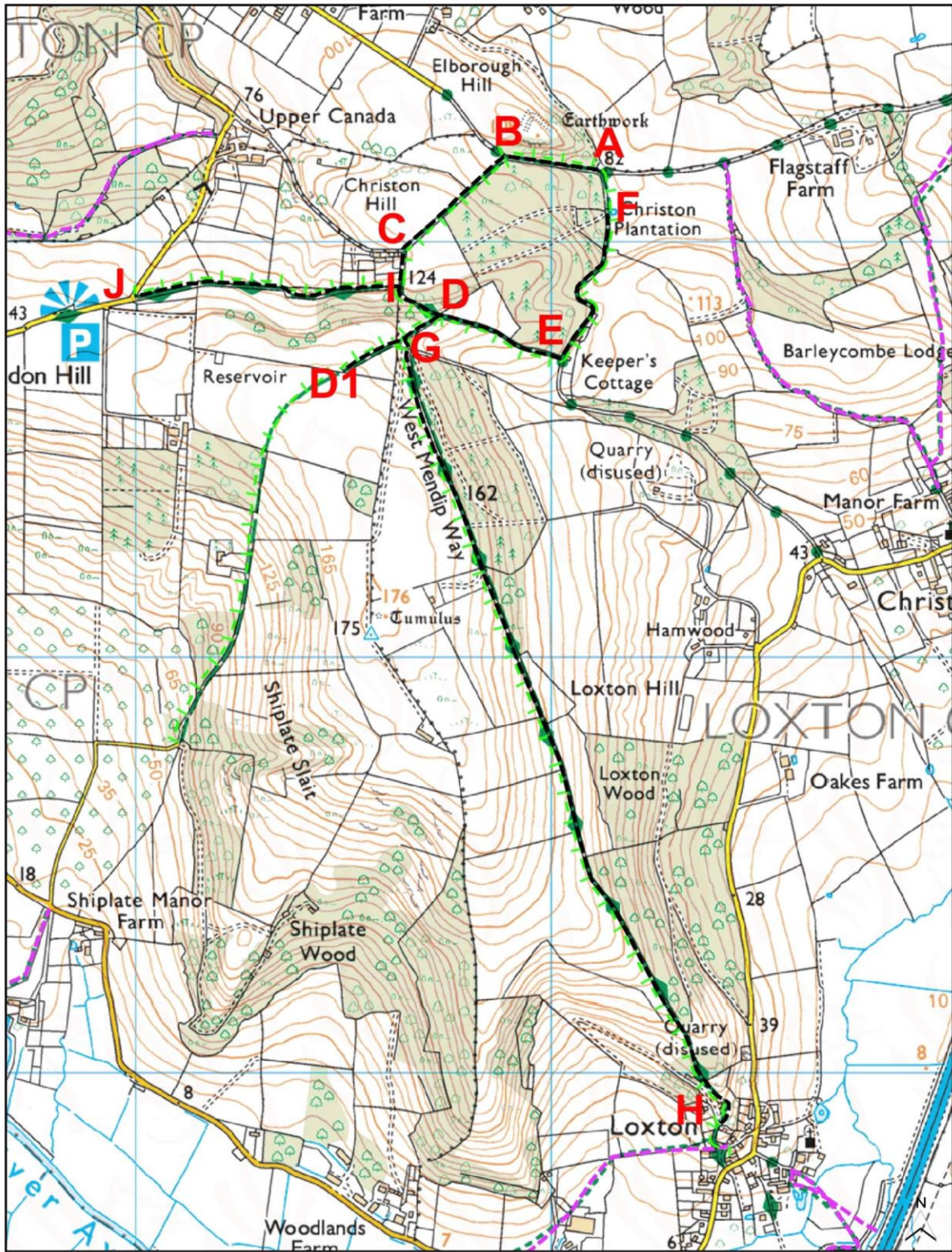
1. Whether the evidence supports the making of a Definitive Map Modification Order upgrading from Bridleway to Restricted Byway the route B-A-F-E-D-I.
2. Whether the evidence supports the making of a Definitive Map Modification Order upgrading from Bridleway to Restricted Byway the route B-C-I.
3. Whether the evidence supports the making of a Definitive Map Modification Order upgrading from Bridleway to Restricted Byway the route D-G.
4. Whether the evidence supports the making of a Definitive Map Modification Order upgrading from Bridleway to Restricted Byway the route G-D1.
5. Whether the evidence supports the making of a Definitive Map Modification Order upgrading from Bridleway to Restricted Byway the route H-G.
6. Whether the evidence supports the making of a Definitive Map Modification Order upgrading from Bridleway to Restricted Byway the route I-J.
7. Whether the application should be denied as there is insufficient evidence to support the making of an Order for any of the above.

AUTHOR

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BACKGROUND PAPERS: - Public Rights of Way File Mod 92

LOCATION MAP EB/MOD 92



EB/MOD 92

Bridewell Lane Via Christon Plantation

Scale: 1:12000
Drawn by: Lucy Roca
Date: 03 July 2018
Time: 09:53:45

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The Legal Basis for Deciding the Claim

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

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

- (ii) "that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description"

The basis of the application in respect of the claimed Restricted Byways is that the applicants believe that the requirement of Section 53(3)(c)(ii) has been fulfilled.

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

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

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

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

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

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

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

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

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 19 February 2007 from Woodspring Bridleways Association (“The Association”). The basis of their application is that they believe that several routes located leading to and around an area known as Christon Plantation currently recorded on the Definitive Map as Bridleways should be recorded as Restricted Byways.

The applicants have not submitted any evidence with their application, choosing only to state on the application “Varying the Restricted Byways to a width between 12 – 20 feet or as Inclosure Awarded”. The applicants have also chosen to place notices at various locations around this area rather than serve notice on the owners of the land. Serving notice upon the owners of the land is a requirement of the legislation and sufficient reason for an application to be refused. However as North Somerset Council have been directed to determine this matter this report is being presented to the Public Rights of Way Sub Committee.

Due to the lack of presented evidence it is difficult to provide detail of the reasons for the application. Whilst the applicant has stated that these routes should be upgraded to Restricted Byway as per Inclosure Award the name of the Inclosure Award has not been given. To locate the relevant Inclosure Award officers from North Somerset have looked at the Inclosure Awards for Loxton, Hutton and Banwell. The only Inclosure Award found to be relevant is Loxton therefore this is the only one which will be detailed within this report.

This matter is currently recorded on the Definitive Map Register as Mod 92.

It should be noted that the Council has undertaken additional research into records that are held within the Council as well as those obtained from external sources. These are detailed in **Appendix 3** of this report.

2. The 2007 application claims that six sections of Bridleway currently recorded on the Definitive Map should be recorded as Restricted Byways. The paths that are currently recorded on the Definitive Map and Statement which are affected by this report are Public Bridleways AX 21/6, AX 21/10, AX 6/25, AX 6/18, and two sections of AX 21/1. The claimed routes are in the Parishes of Bleadon and Loxton.
3. The first route B-A-F-E-D-I (Bridleway AX21/6) commences from its junction with Windmill Hill, Point B and proceeds in an easterly direction for approximately 240 metres to its junction with Bridewell Lane, Point A, then proceeds in a southerly direction for approximately 100 metres to Point F. The route then proceeds in a south easterly direction for approximately 420 metres to Point E and then North Westerly for approximately 320 metres to Point D then continuing in a North Westerly direction for approximately 130 metres to Point I.
4. The second route B-C-I (Bridleway AX21/10) commences from Point B and proceeds in a south westerly direction for approximately 330 metres to Point C, and then continues in a southerly direction for approximately 100 metres to point I.
5. The third route D-G (Bridleway AX 21/1) commences from Point D and proceeds in a south westerly direction for approximately 100 metres to Point G.

6. The fourth route G-D1 (Bridleway AX6/18) commences from Point G and proceeds in a south westerly direction for approximately 170 metres to Point D1.
7. The fifth route H-G (Bridleway AX21/1) commences from the village of Loxton at point H and proceeds in a north westerly direction along the route known as the West Mendip Way for approximately 2100 metres to Point G.
8. The sixth route I-J (Bridleway AX6/25) commences from point I and proceeds in a westerly direction for approximately 650 metres to Point J its junction with Canada Coombe.
9. These claimed Restricted Byways are illustrated as bold black broken lines on the attached Location Plan EB/Mod 92 (scale 1:12000).

Analysis of the Documentary Evidence

This claim is based solely on documentary evidence. The documentary evidence is listed in chronological order. These routes are illustrated on the plan attached Location Plan EB/MOD 92.

Loxton Inclosure Award 1851

This Inclosure Award is of a later date than others and relates to the Inclosure of Loxton Hill and Common. This Award was produced by William Summers of the parish of Broadway in the County of Somerset. It reads:

Whereas by a Provisional Order under the Seal of the Inclosure Commissioner for England and Wales dated the fifteenth day of February One Thousand eight hundred and forty nine by the necessary consents given to such order and be the Second Annual Inclosure Act 1849 the Inclosure of Loxton Hill and Common situate in the Parish of Loxton in the County of Somerset has been duly authorised under the provisions of the Act passed in the eighth and ninth years of the reign of Her Present Majesty Chapter 118.

Now Know Ye that in pursuance of the provisions of the said Acts and by virtue of the powers and authorities in me vested I the said William Summers the Valuer as aforesaid so make and declare this to be my Award in the Matter of the said Inclosure and to this my Award I have annexed the Map referred to by my said Report.

And first I declare that I have discontinued and stopped up the Public Roads and Ways in the said Parish hereinafter particularly mentioned that is to say

*A certain Public Carriage Road or Highway commencing at the point marked **A** at the Southern Boundary of Loxton Hill leading from Loxton Village through over and along the said Hill near adjoining to Old Inclosed Lands belonging to Erasmus Galton Esquire and terminating at the Northern Boundary of the said Loxton Hill adjoining the parish of Christon at the point marked **B** on the said Map (these references relate to the lettering on the Award Plan)*

The route described above and shown on the Inclosure Plan as A – B is the same route shown on the Location Plan H-G. This clearly illustrates that this route ceased to be a Public Carriage Road around 1851, those rights being discontinued and stopped up. Extracts of the Inclosure Plan is attached as **Document 1**.

The Inclosure Award then continues to read “*And I further declare that I have set out and appointed and do hereby set out and appoint the following private carriage and occupation roads that is to say*”

*One private Carriage and Occupation Road of the width of twenty-five feet commencing at the said point marked **A** at the Southern Boundary of the said Loxton Hill and extending thence in a Northerly direction to and terminating at the point **F** on the said Map which said Road is set out for the use of the Owners and occupiers for the time being of the Allotments numbered on the said Map from 2 to 10 inclusive and numbered 16*

A copy of the first page of the Inclosure Award is attached to this report as **Document 2**.

The Award then goes on to state that this route is to be maintained by the owners and occupiers of the allotments.

One final piece of this Award which is relevant to this claim reads

*And I declare that I have set out and appointed and do hereby set out and appoint One halter path or public footway of the width of Four Feet commencing at the said point marked **A** on the said Map and extending thence through the allotment hereinafter set out for Exercise and Recreation in a Northerly direction through over and along the private occupation Road first hereinbefore described to and terminating at the said point marked **B***

A copy of the second page of the Inclosure Award is attached to this report as **Document 3**.

As previously mentioned no further documentation has been located within either the Bleadon, Hutton or Banwell Inclosure Awards to assist with this application.

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.

This area of land falls upon more than one sheet and it has only been possible to view the two sheets relating to the routes around Christon Plantation. The base maps used are the second edition 1903.

The extracts which we have been able to view show the sections B-A-F-E-D-I, B-C-I, D-G, G-D1 and I-J. Other than the sections between A-F, D-G and G-D1 these routes appear to be excluded from the adjoining hereditaments. Two of these routes seem to be coloured yellow B-A and C-I. The reason for this is unclear as this yellow colouring seems to continue across fields, not just keeping to the tracks.

There is the depiction of double pecked lines along some of these routes however that does not assist with establishing status of these routes only implying that these were tracks. These plans assist in showing that these routes have been on the ground for a considerable time but do not assist with status.

The two extracts which have been looked at and relevant to this area are attached as **Document 4**.

Handover Map of Locking/Hutton (1930)

The Handover Map, which was drawn up in 1930 upon a map base dated 1888 was produced to record routes which were maintained by the local authority. The two maps which have been located illustrate all the routes which are being claimed namely B-A-F-E-D-I, B-C-I, D-G, G-D1, H-G and I-J.

It can be seen upon these maps that there are routes coloured either yellow or brown connecting to Christon Plantation. This matches the routes known as Bridewell Lane, Windmill Hill and Weston Lane. These being the routes which are adopted highways. No other routes are coloured in this way.

It should be noted that there are pencil markings against the route I-J which reads "Private Road Bridewell Lane Manor of Bleadon Enclosure 22.9.1791". As previously mentioned some investigation has been undertaken to locate these routes upon other Enclosure Awards which was unsuccessful.

There is also a pencil notation written against the route A-F it is written BR 21/6 in pencil.

These documents clearly illustrate that none of these routes were maintained by the local authority. Whilst these documents assist with establishing records of maintenance responsibility and existence, they do not assist in establishing status.

The two extracts which have been looked at and relevant to this area are attached as **Document 5**.

Axbridge Rural District Council **Definitive Map Process (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.

Parish Survey Plan

The only Parish Survey Plan which is held by North Somerset Council shows the section H-G in the Parish of Loxton. This clearly shows AX 21/1 as a solid green line. An extract of this plan is attached to this report as **Document 6**.

Parish Walking Cards

Bridleway AX21/6 (B-A-F-E-D-I) reads "Kind of Path BR. The path starts at the end of Windmill Lane (C Road 140) & runs E along Bridewell Lane to a point just east of Christon Plantation & thence S & W around the Plantation to the Parish Bdy where it continues W as BR 6/25 to the Bleadon Hill Road". This card is not signed or dated. A copy of this walking card is attached to this report at **Document 7**.

Bridleway AX21/10 (B-C-I) reads "Kind of Path BR. The path starts at Bridewell Lane and runs in a south westerly direction along north-western side of Christon Plantation to junction of BR6/25 and BR21/6". This card is not signed or dated. A copy of this walking card is attached to this report at **Document 8**.

Bridleway AX6/18 part of which (G-D1) reads "Kind of Path BR. The path starts at Mercombe Lane. Field gate with notice board (Trespassers Prosecuted) proceeding North up rough cart track 200 yds, wire fence east of House grass cart track to top of Hill (East of Wood) 200 yds. 3 wire fences dividing into 3 fields between wood & Bridle Lane 200 yds. Field Gate wired up to Bridle Lane". This walking card is signed by W Poole on 27/3/51,

Agreed by W Young on 10/4/51 and approved by Rural District Council on 25 June 1951. A copy of this walking card is attached to this report at **Document 9**.

Bridleway AX21/1 (H-G) and Bridleway AX 21/1 (D-G) reads "Kind of Path BR Bridle Path (Road). The path starts at Main Loxton Road at Parish Hall, a swing gate, (W.G.) then uphill through 'Parish Acre', a rough cart track, at end of Parish Acre there is a 5 bar field gate (F.G) it then continues for about 1 mile, a green lane, used by farm carts and/or tractors. Through 3 more gates (F.G) until it joins the Christon - Hutton Road (at top of hill). No sign posts or directions". Then written in pencil "A short spur at N end runs W to the Bledon P.bdy & continues as BR6/18". This walking card is signed and dated Nov 11 1950, agreed by the Parish by the same person (Christelow) and dated 6 Dec 1950 and approved by the Rural District 25 Jun 1951. A copy of this walking card is attached to this report at **Document 10**.

Bridleway AX6/25 (I-J). Although a card exists with this number upon and Kind of Path BR the wording upon this is a note. It reads Note: "The land from the top of Canada Combe Road leading to Christon Road was not included in these viewers lists, but is should not be over-looked. Also the path at the far end of this lane, running back over hill to "The Caterpillar£ should be scheduled". Note; "The above lane has been referred to at Parish Council Meetings as Bridewell Lane, but the map shows Bridewell Lane as being the land that runs from the lower North-east end of Christon Plantation to Whitely Head, and as this is a considerable distance from the lane in question, it is likely to lead to confusion to anyone not knowing the district well". Written in pencil "JBW put this on Draft Map as BR in view of parish note on 6" map that it is private". The walking card is signed by J Clark on 28 March 1951, agreed by W Young on 10 April 1951 and approved by Rural District Council on 25 June 1951. A copy of this walking card is attached to this report at **Document 11**.

Draft Map

All the routes the subject of this application except for B-C-I are illustrated upon this plan by marking them with a green line, indicating Bridleway. This is in line with the walking cards which were submitted to the Rural District Council by the Parish Councils. An extract of this plan is attached to this report at **Document 12**.

Draft Map Modification Plan

Following the publication of the draft map comments were invited from interested parties such as the Ramblers Association. Records show that the Ramblers made a comment regarding the omission of AX21/10 from the Draft Map. That comment read "Omission of footpath from Bridewell Lane south westerly along north-western side of Christon Plantation to junction of 6/25 and 21/6". The observation by clerk reads "Appears to be ancient highway" Determination to add BR numbered 21/10". These amendments were recorded on the Draft Map Modification Plan. An extract from the draft Modification Plan is attached as **Document 13**.

Provisional Map

Following the Draft Map Modification stage landowners were then invited to view the Provisional Map to comment against should they so wish. There are no records that any comment was made against these routes being recorded as Bridleways. The provisional map shows all the claimed routes as a solid green line. An extract of most of the claimed route on the Provisional Plan is attached as **Document 14**.

Axbridge Rural District Council Definitive Map – Relevant Date 26 November 1956

The conclusion of this process was the production of the Definitive Map. This document along with its statement became the legally recorded record for routes shown on that map. This map shows AX21/10, AX21/6, AX6/25, AX6/18 and AX21/1 all recorded as Bridleways (green lines). An extract from the Definitive Map for this area is attached as **Document 15**.

Definitive Statements

Bridleway AX21/6 reads “The path is a bridleway it starts at the end of Windmill Lane (County Road 140) and runs east along Bridewell Lane to a point just east of Christon Plantation and thence south and west around the Plantation to the parish boundary where it continues west as BR 6/25 to the Bleadon Hill road”.

Bridleway AX21/10 reads “The path is a Bridleway it starts at Bridewell Lane and runs in a south westerly direction along north-western side of Christon Plantation to junction of BR 6/25 and BR 21/6”.

Bridleway AX 21/1 reads “The path is a bridleway it starts at Loxton Village street at the Parish Hall and proceeds along tarmac path past school and uphill through ‘Parish Acre’, a rough cart track, to farm gate, and thence northwards along a green lane to join bridleway 6 near Christon Plantation and the Christon – Hutton Road. A short spur at northern end runs west to the Bleadon Parish Boundary and continues as BR 6/18 to Shiplate”.

Bridleway AX6/18 reads “The path is a Bridleway it starts at Marcombe Lane (county road) and proceeds north easterly up over Shiplate Slait, east of house, and continues to the parish boundary where it joins Bridleway 21/1 in Loxton Parish”.

Bridleway AX6/25 reads “The path is a Bridleway it starts at the eastern end of Roman Road at point 441 on the map and continues due east to the Loxton Parish Boundary near Christon Plantation, where it continues as BR 21/6 to Bridewell Lane”.

These statements are consistent with how the route is recorded on the Definitive Maps.

Consultation and Landowner Responses

Pre- Order Consultation letters were sent on the 3rd July 2018 to neighbouring land owners, local user groups and utility companies.

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

Name	Objection or Supporter	Comments
Councillor E Ap Rees	No Objection	Having spent my formative years growing up at Hamwood in the centre of this area and regularly walking these routes, I have no objection to this proposed order.
Bristol Water	No Objection	We confirm that we have no objection to the proposed stopping up modification order at the above location.
Wales & West Utilities	No Objection	According to our mains records Wales and 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 Global	No Objection	We refer to the below or attached order and confirm that we have no objections.
Virgin Media	No Objection	Virgin Media and Viatel plant should not be affected by your proposed work and no strategic additions to our existing network are envisaged in the immediate future.
Cadent Gas & National Grid	No Objection	Searches 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 objections to these proposed activities.
Mr P Revington	Objection	In principle I have no difficulty with this. Indeed, this redesignation do anything to prevent unauthorised vehicular access, it should be welcomed. My concern is only that your letter does not make it clear that those of us who own land along these routes and who therefore have a legitimate need for motorised access for forestry, agricultural and sporting purposes; will have those rights of access protected should this change be implemented. Furthermore, I suspect the lack of policing will do nothing to deter the quad bikers from remaining the nuisance that they now are. I would welcome your reassurance on this matter... without which, I object most strongly to the proposed redesignation.
Ms J Roseff (Applicant)	User Evidence	When I was young everybody drove through there from Canada Coombe or Loxton to have picnics there, usually several cars already there every time we went in the 1950-60s. The part through to Banwell that they built a motorway bridge for was more uneven. I used to ride it late 60s to 1980 and sometimes met vehicles on it but it wasn't so well used by private cars.
Mr & Mrs Lance	Supporter	In reply to your letter dated 3 rd July 2018. As landowners on the North side of the portion of the lane marked A to B on your plan we broadly agree to the application with additional provision for access by powered vehicles for maintenance and farming activities.

We have always removed fallen trees across the track and there is sometimes illegal dumping along these lanes so N. Somerset council has to have access to remove the rubbish. Farm machinery also requires access to move from farm to farm.

Mr J Atherton

Objection

Further to our recent telephone conversation my wife and I would like to make the following comments on the proposals you outlined.

We feel strongly that if changes are to be made, they should preserve the AONB for future generations to enjoy, but prevent the damage and dangers caused by off-road driving, and fly tipping. The changes should also benefit and protect the residents of the AONB and its surroundings.

Your letter of 3rd July proposes that a number of routes, shown on your enclosed plan, should in the future be recorded as restricted byways. We are very strongly in favour of this proposal as it will greatly help the ideals stated in red above. It will prevent access to off-road 4x4s, motorcycles and fly tippers and will make life much better and safer for local residents whilst allowing legitimate members of the public to freely access the area.

In your letter of 6th July you refer to an application made by Hutton Parish Council in 1999 that the road from Canada Coombe to Grattons Farm be recorded as A BYWAY OPEN TO ALL TRAFFIC. The application to Hutton Parish Council for this change, was made by the former owners of Grattons Farm who subsequently sold the property to me and my wife 12 years ago. My wife and I are very strongly against this change as this will work against the ideals stated in red above. The road is signposted as a private road but access has always been given and never denied to walkers, horse riders, cyclists, in fact to anyone other than those not permitted on a restricted byway. Were this road to be opened to all traffic, it would allow vehicles to reach the bridleways around Christon Plantation but no further since these bridleways are proposed to become restricted byways. Making this road open to all traffic would allow access into the AONB to just those vehicles which are being restricted. Also, any increase in traffic on this road would be detrimental to the residents through noise, and loss of privacy and would be dangerous to walkers and riders.

As the current owners of Grattons Farm we would like to withdraw the request put to the Parish Council in 1999 by the previous owners.

We also believe that the signposting of the road as PRIVATE deters access to non-legitimate users and gives the residents along this road a reason to approach and deter these non-legitimate users, thereby helping to support the ideals shown in red.

We believe that by far the best option is to keep this road signposted as it is and used as it has been.

Summary of Evidence and Conclusion

Summary of Documentary Evidence

Taking all the documents into consideration many of the later produced documents illustrate the existence of the routes, this is not so clear on the earlier documentation. However the fact that these are depicted does not confirm status.

Despite claiming that these routes were illustrated upon an Old Inclosure Award no evidence was submitted by the applicant to support this assumption. The Loxton Enclosure Award was located by North Somerset Council; however, this Award only relates to the section H-G and the Award clearly states that any public carriage rights over the section G-H (A-B as depicted on the Enclosure Plan) have been removed and it has been designated as a Halter Path, consistent with bridleway today. Ms Roseff claims to have driven along these routes, however one person's documented use is insufficient to establish a use for the public as a whole and it is not clear which route she used. If such use had been over this route, following the Inclosure Award this would be considered a trespass against the owner of the land. Her use of riding this route being consistent with it being a Bridleway.

Nothing within the other documents within this report provide any evidence that the decision made through the Definitive Map process was incorrect. The parties who responded to the consultation have stated that problems exist of use by quad bikes and believe by supporting this reclassification would remove these problems however no user evidence has been submitted to suggest that the public at large rather than a minority group have undertaken this.

The owners of the land would like to see these routes reclassified to Restricted Byway so that such use of quad bikes over these routes would make it an offence, however policing of the area would be impossible and structures could not be placed to prevent access. This is something that cannot be taken into considering whether the evidence supports the claim or not.

Whilst these may well have been routes used back to the 1800 for accessing other areas of the countryside no evidence has been produced or found to support that these routes have established higher rights than bridleway and that they should be recorded as Restricted Byways. There is no evidence to show that the Council have regarded these routes as anything other than bridleways

During the production of the Definitive Map in 1950 a full record of the process has been located and nothing has been found to suggest that this classification was incorrect. These surveys were carried out by persons who knew the area.

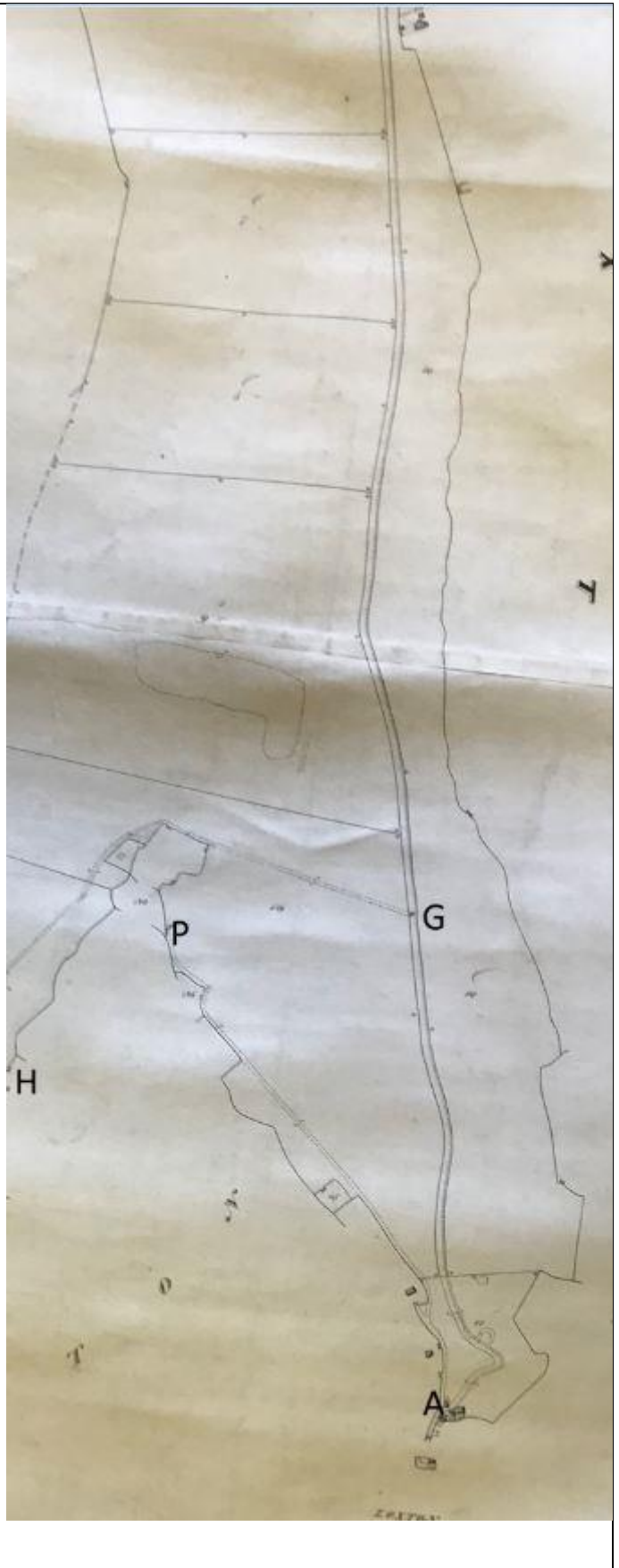
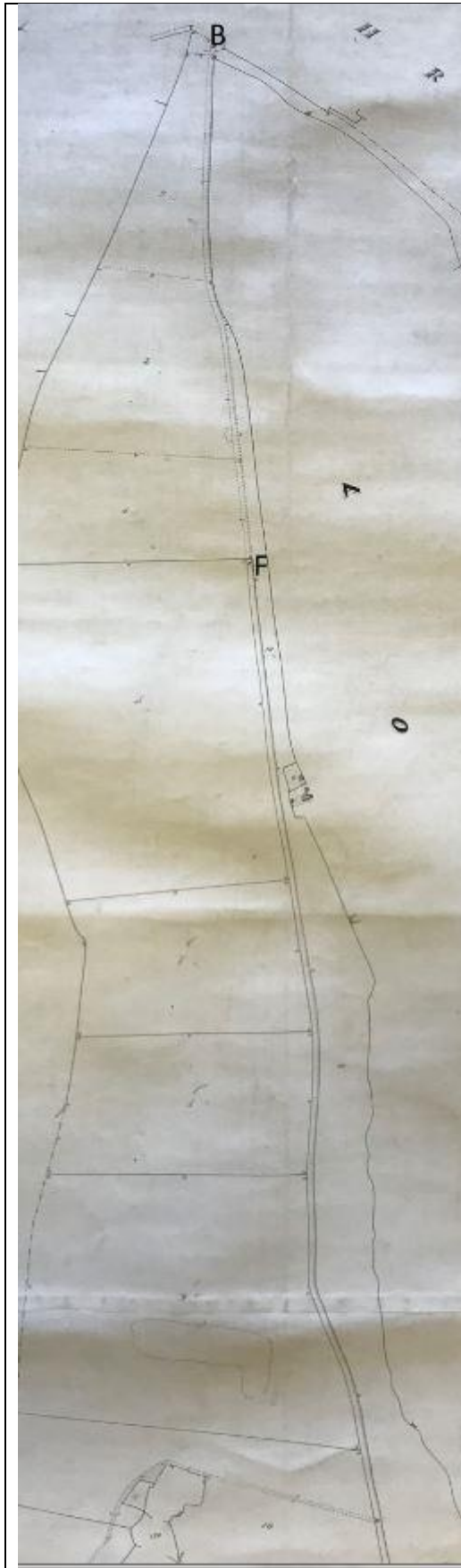
Taking all the documentary evidence into consideration although sufficient evidence has been found to support the existence of these routes, nothing has been found to suggest that their status should be changed. Therefore, based on this documentary evidence, the Officer does not feel that the evidence supports the claim that these routes should be Restricted Byways.

Conclusion

This application affects routes which are already recorded on the Definitive Map as Bridleways. To alter the status of a route on the Definitive Map, the evidence must indicate that the route which is already recorded “**ought**” to be shown as a route of a different status. This is considered a stronger test than a simple addition to the Definitive Map, where the requirement is that a right of way “is reasonably alleged to subsist”. The term “ought” involves a judgement that a case has been made and that it is felt that the evidence reviewed in the investigation supports the application on the balance of probabilities.

There is no evidence to support the claim that Bridleway AX21/6 (B-A-F-E-D-I), Bridleway AX21/10 (B-C-I), Bridleway AX 21/1 (D-G), Bridleway AX6/18 (G-D1), Bridleway AX21/1 (H-G) or Bridleway AX6/25 (I-J) should be upgraded from Bridleway to Restricted Byway therefore it cannot be said that a case has been made.

DOCUMENT 1
Loxton Inclosure Plan 1851



Go all to whom these Presents shall come

I William Summers of the parish of Broadway, in the County of Somerset Land Surveyor send greeting

Whereas by a Provisional Order under the Seal of the Inclosure Commissioners for England and Wales dated the 17th day of February One thousand eight hundred and forty nine by the necessary consents given to such Order and by the Second Annual Meeting Inclosure Act 1849 the Inclosure of Loxton Hill and Common situate in the Parish of Loxton in the County of Somerset has been duly authorized under the provisions of the Act passed in the eighth and ninth years of the reign of Her present Majesty Chapter 110

And Whereas I the said William Summers have been appointed the Valuer in the matter of the said Inclosure and having made the Declaration required by the said last mentioned Act have duly held all necessary Meetings and drawn up and sent to the said Inclosure Commissioners my Report in writing in the matter of the said Inclosure with a Map thereunto annexed and in all other respects complied with the provisions of the said last mentioned Act

And whereas all such objections as have been made to my Report having been heard and all such enquiries having been made in relation thereto as the said Inclosure Commissioners have thought fit the said Inclosure Commissioners have authorized and directed me to cause to be drawn up and engrossed on parchment my Award in the Matter of such Inclosure

Ye shall know

That in pursuance of the provisions of the said Acts and by virtue of the powers and authorities in me vested I the said William Summers the Valuer as aforesaid do make and declare this to be my Award in the Matter of the said Inclosure and to this my Award I have annexed the Map referred to by my said Report

And first I declare that I have discontinued and stopped up the Public Roads and Ways in the said Parish hereinafter particularly mentioned that is to say

A certain Public Carriage Road or Highway commencing at the point marked A at the Southern Boundary of Loxton Hill leading from Loxton Village through over and along the said Hill near adjoining to Old Inclosed Lands belonging to Erasmus Galton Esquire to and terminating at the Northern Boundary of the said Loxton Hill adjoining the parish of Christon at the point marked B on the said Map

And One other public Road or highway commencing at the points marked C and extending by old inclosed lands and over part of the said Loxton Hill called Knolls Bath to and terminating at the Boundary of the said Common adjoining Christon Hill at the point marked D on the said Map

And further declare that I have set out and widened partly on the North and partly on the South sides the public Road leading from Bladen to be of the width of twenty to thirty feet commencing at the point marked M and terminating at the point marked N on the said Map

And further declare that I have set out and appointed and do hereby set out and appoint the following private carriage and occupation roads that is to say

One private carriage and occupation Road of the width of twenty feet commencing at the said point marked A at the Southern Boundary of the said Loxton Hill and extending thence in a Northwesterly direction to and terminating at the point marked F on the said Map which said Road is set out for the use of the tenants and occupiers for the term being of the Allotments numbered on the said Map from 2 to 10 inclusive and numbered 16

One other private carriage and occupation Road of the width of ten feet commencing at the said point marked A on the said Map and extending thence in a Northwesterly direction through the Allotments numbered 11 and 16 to and terminating at the point marked P on the said Map being the entrance to a Garden numbered 110 in the 2dth Commutation Plan

One other private carriage and occupation Road of the width of ten feet branching out of the said first mentioned Private Road at a point marked G on the said Map and extending thence in a Westerly and southerly direction to and terminating at the point marked H on the Allotment numbered 18 on the said Map

One other private carriage and occupation Road of the width of ten feet branching out of the said last mentioned Road at a point marked Q on the said Map and extending thence in a Southerly direction to and terminating at the point marked R on the said Map

Which said three last mentioned Roads lead into old inclosed lands belonging

11

12
13
14

15
16
17
18

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In Crasmus Galton and his Lessees for the use and benefit of the Owners and Occupiers of which lands for the time being the said Roads are set out—

One other private Carriage and Occupation Road of the width of sixteen feet branching out of the before mentioned Public Road leading from Bleadon to Croft at a point marked K on the said Map and extending thence in a southerly direction to and terminating at the point marked L leading into old inclosed lands belonging to the Reverend Joseph Colterill for the use and benefit of the Owners and Occupiers of which said lands for the time being the said Road is set out—

And one other private Carriage and Occupation Road of the width of twenty six feet branching out of the Public Road leading from Loxton to Bleadon at a point marked I and extending thence in a southerly direction to and terminating at a point marked J on the said Map leading to old inclosed lands belonging to Mary Ann Schemmellquinnick the Reverend Harry Baron Crasmus Galton and William Holmes for whose use and benefit respectively the said Road is set out—

And I do declare and appoint that the said private Carriage and Occupation roads shall for ever hereafter be maintained and repaired by the Owners and Proprietors of the several allotments hereinafter named and in the following proportions videlicet From the point marked P of the allotment numbered 2, 3, 4 and 10 for five hundred and twenty yards thence of allotment numbered 5 for three hundred and twenty two yards thence of allotment numbered 7 for one hundred and four yards thence of allotment numbered 8 for one hundred and four yards thence of allotment numbered 9 for two hundred and eleven yards and thence of allotments numbered 15, 16 and 17 for two hundred and eleven yards to the point marked A on the said Map. From the point marked A by the owner and proprietor of the allotments numbered 15, 16 and 17 to the point marked P on the said Map. From the point marked G by the owner and proprietor of allotments numbered 15, 16 and 17 for three hundred and fifty two yards thence of allotments numbered 18, 19 and 20 for two hundred and nine yards to the point marked H on the said Map. From the point marked H by the owner and proprietor of allotments numbered 2, 3, 4, 5 and 10 for one hundred and sixty yards thence of allotment numbered 6 and 26 for twenty six yards thence of allotment numbered 7 for thirty two yards thence of allotment numbered 8 for thirty two yards thence of allotment numbered 9 and 22 for thirty four yards thence of allotments numbered 15, 16 and 17 for thirty four yards and thence of allotments numbered 18, 19, 20, and 21 for forty eight yards to the point marked J on the said Map. And from the point marked K to the point marked L by the owner and proprietor of the allotment numbered 9 on the said Map—

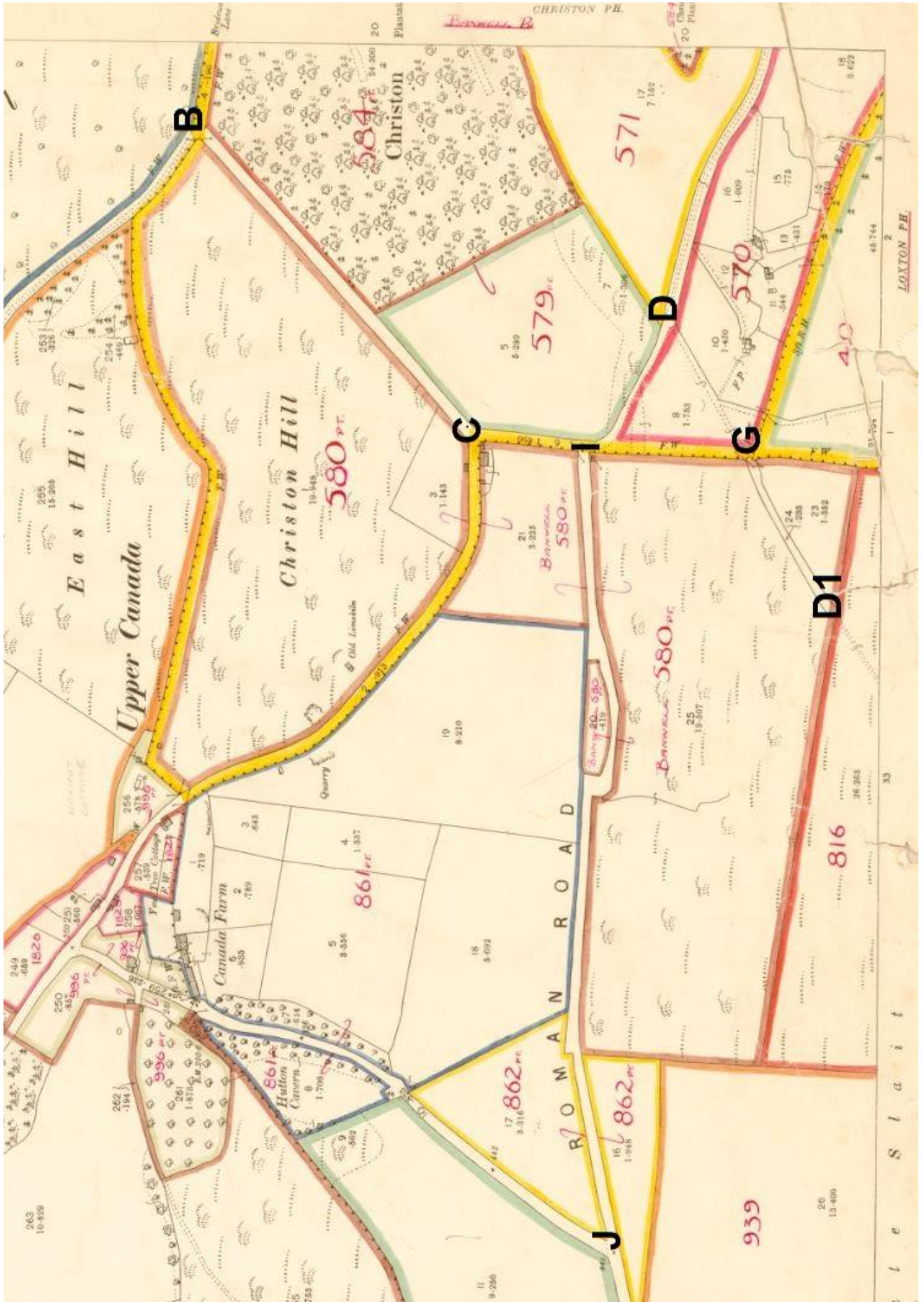
And I do declare that I have set out and appointed and do hereby set out and appoint—

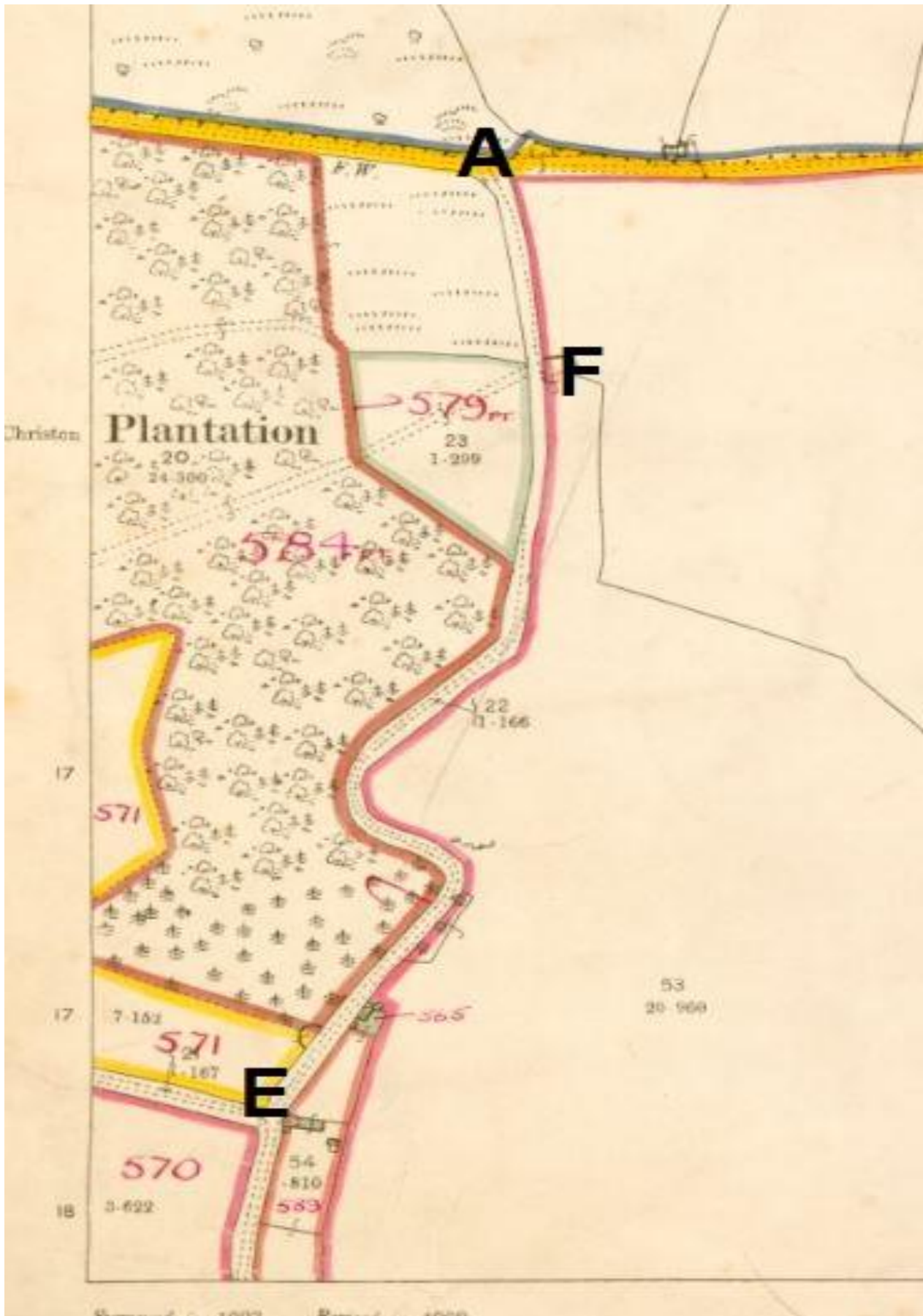
One better path or public footway of the width of four feet commencing at the said point marked A on the said Map and extending thence through the allotment hereinafter set out for exercise and recreation in a southerly direction through over and along the private Occupation Road first hereinbefore described to and terminating at the said point marked B—

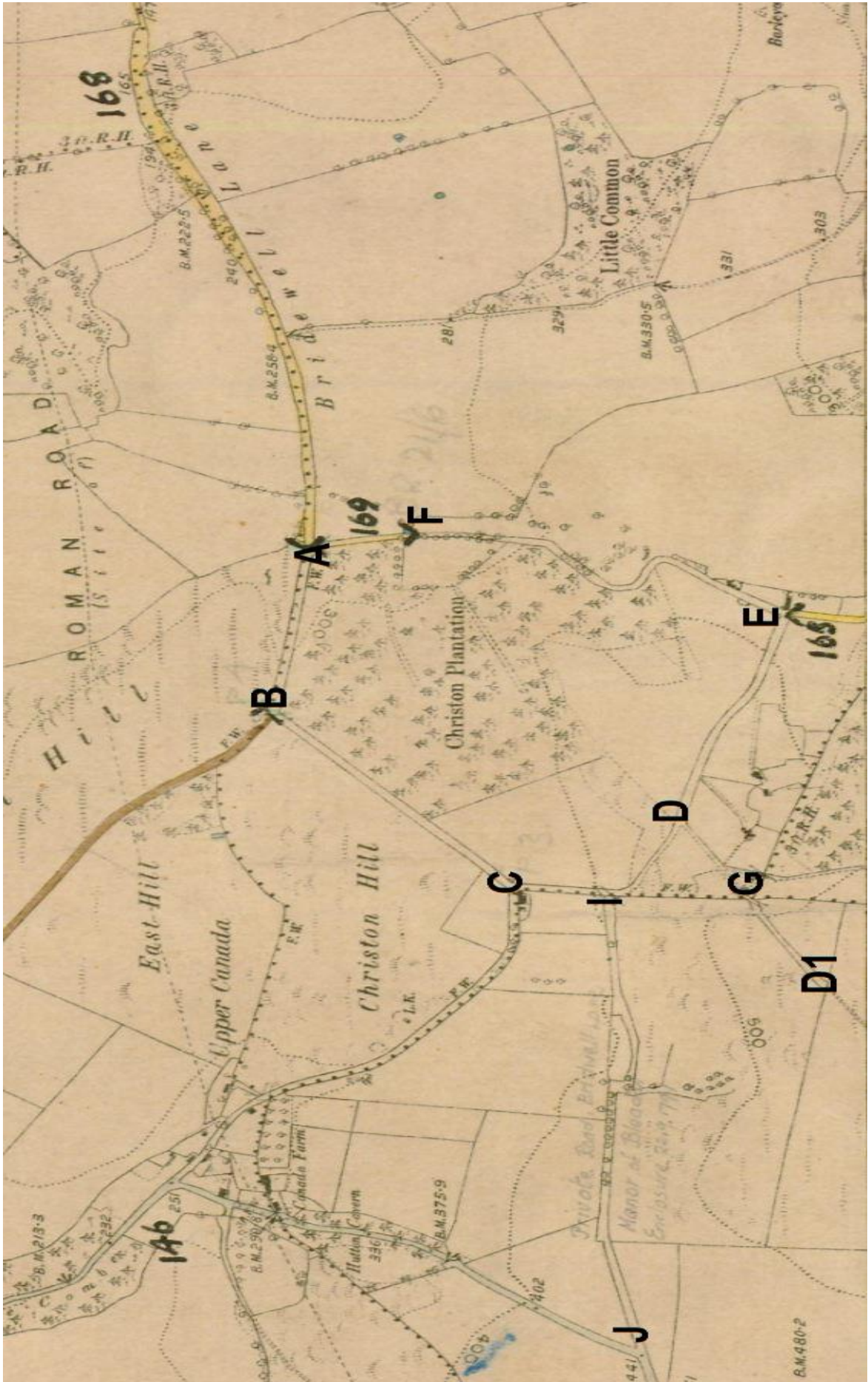
And I do declare that I have set out and do hereby set out allot and award unto the Churchwardens and Overseers of the Poor of the Parish of Loxton All that piece or parcel of land numbered on the said Map 11 containing five acres to be held by them and their successors in trust as a place of exercise and recreation for the Inhabitants of the said Parish and Neighbourhood And I do direct that the fence on the North side of such allotment shall from time to time be repaired and maintained by and at the expense of the Churchwardens and Overseers of the Poor of the said parish for the time being—

And I do declare that I have set out and do hereby set out allot and award unto the Churchwardens and Overseers of the Poor All that Piece or parcel of land numbered 24 on the said Map containing five acres to be held by them and their successors in trust as an allotment for the Labouring Poor of the said Parish of Loxton subject nevertheless to and chargeable with a charitable charge of One pound which said sum does not exceed the net annual value of the said allotment in its present Condition And I do declare the same to be of the value of such number of Imperial Bushels of Wheat Barley and Oats as hereinafter set forth that is to say—

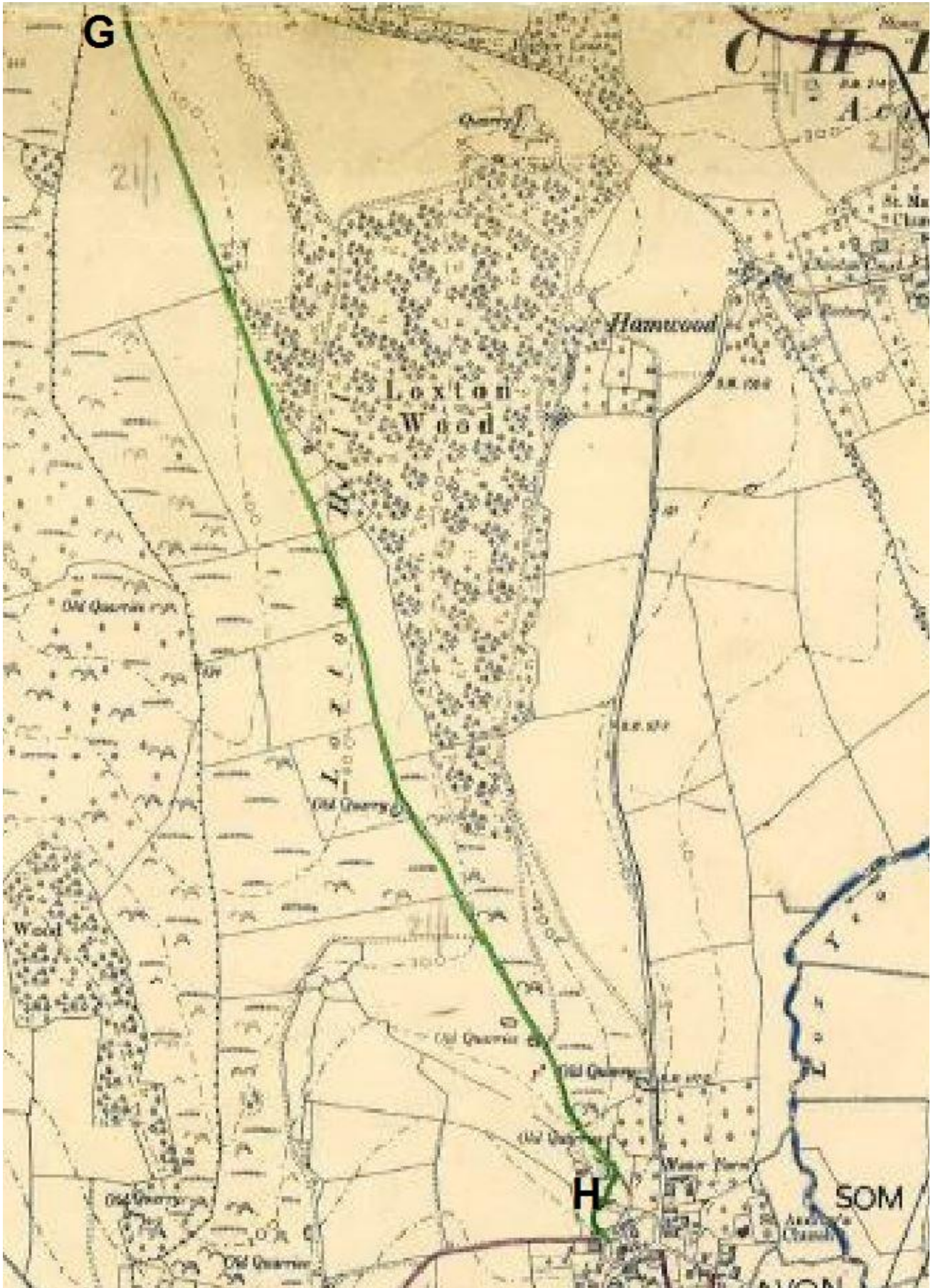
	Price per Bushel	Bushels and Decimal parts
Wheat	7 ¹ / ₂	0.950
Barley	3 ¹¹ / ₂	1.684
Oats	2 ⁹ / ₁₆	2.424











LOXTON

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

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

Parish No. of Path :- 6 Path shown on 6" O.S. No. :- 17 NW Kind of Path, i.e. ~~P.P.~~, B.R., ~~Gr.F.~~ or ~~B.C.F.~~ :-

DESCRIPTION :- The path starts at the end of Windmill Lane (c. road 140)
Travels E along Bridewell Lane to a point just east of
Christon Plantation. Thence S. & W. around the Plantation
to the Parish bdy. where it continues W. as BR 6/25 to the
Bleadon Hill road

P.T.O.

Please continue on second card if necessary)

Walking Survey made by :- (Signed) Date	Agreed by (Borough/Urban Parish Council / Meeting) (Signed) Date Chairman / Clerk	Approved by Rural District Council :- (Signed) Date Chairman / Clerk
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SOMERSET COUNTY COUNCIL

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

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY.

from sheet XVII SW

Parish No. of Path :—

18

Path shown on 6" O.S. No. :—

Kind of Path, i.e. F.P., B.R., C.R.P. or B.R.F. :—

DESCRIPTION :— The path starts at

*MERCombe LANE. Field Gate with notice board
(Trespassers Prosecuted) proceeding North up rough cart track 200yds
Wire Fence East of House grass cart track to top of Hill
(East of Wood) 200 yds. 3 wire fences dividing into 3 Fields between
wood + Bridle Lane 200yds. Field Gate wind up to Bridle Lane*

H.38000

P.T.O.

(Please continue on second card if necessary)

Walking Survey made by :—

(Signed)

W. Poul

Date

27/3/57

Agreed by (Borough/Urban Parish Council / Meeting)

(Signed)

W. Poul

Date

10/4/57

Chairman/Clerk

Approved by Rural District Council :—

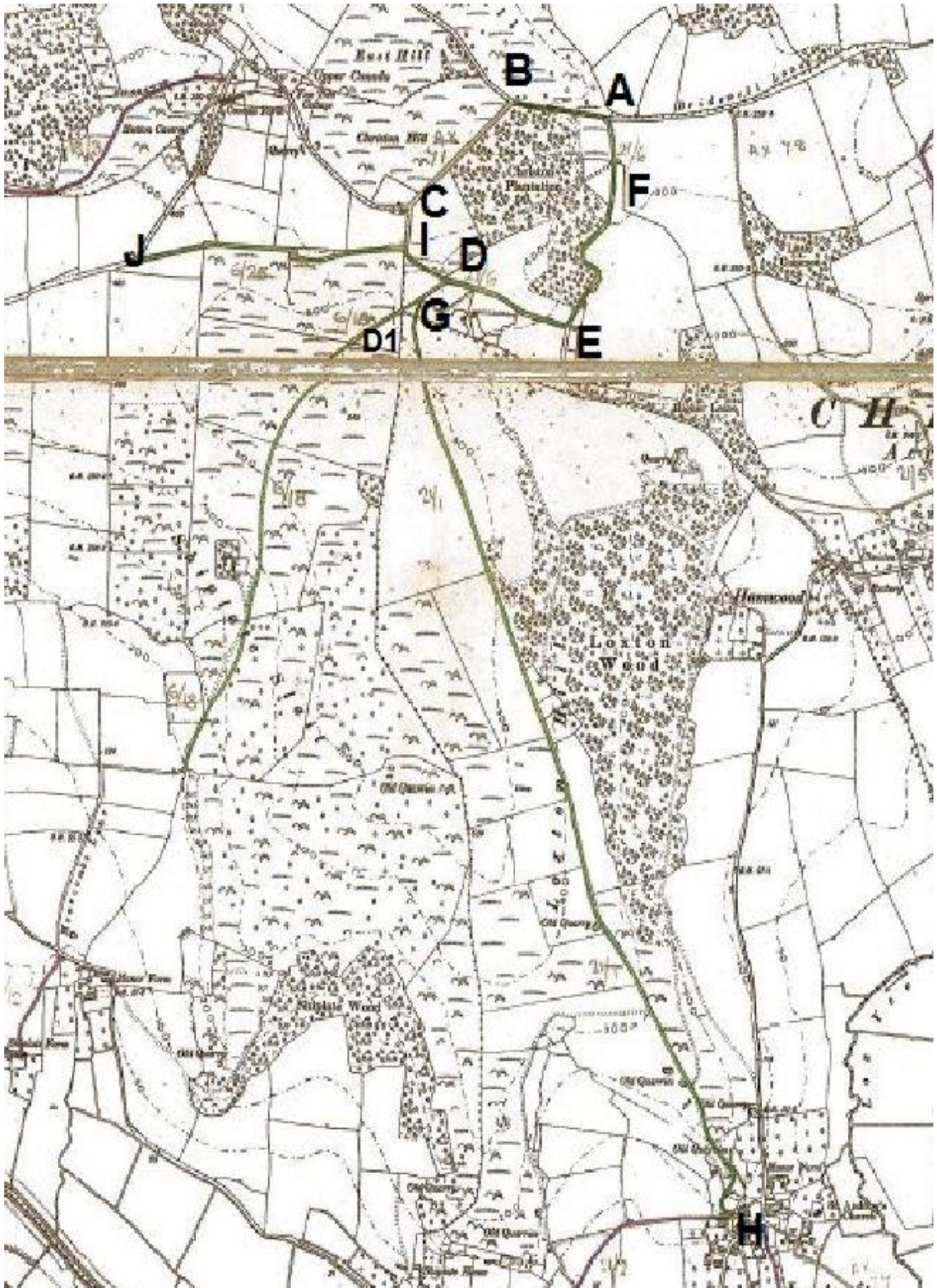
(Signed)

Frank K. G. G.

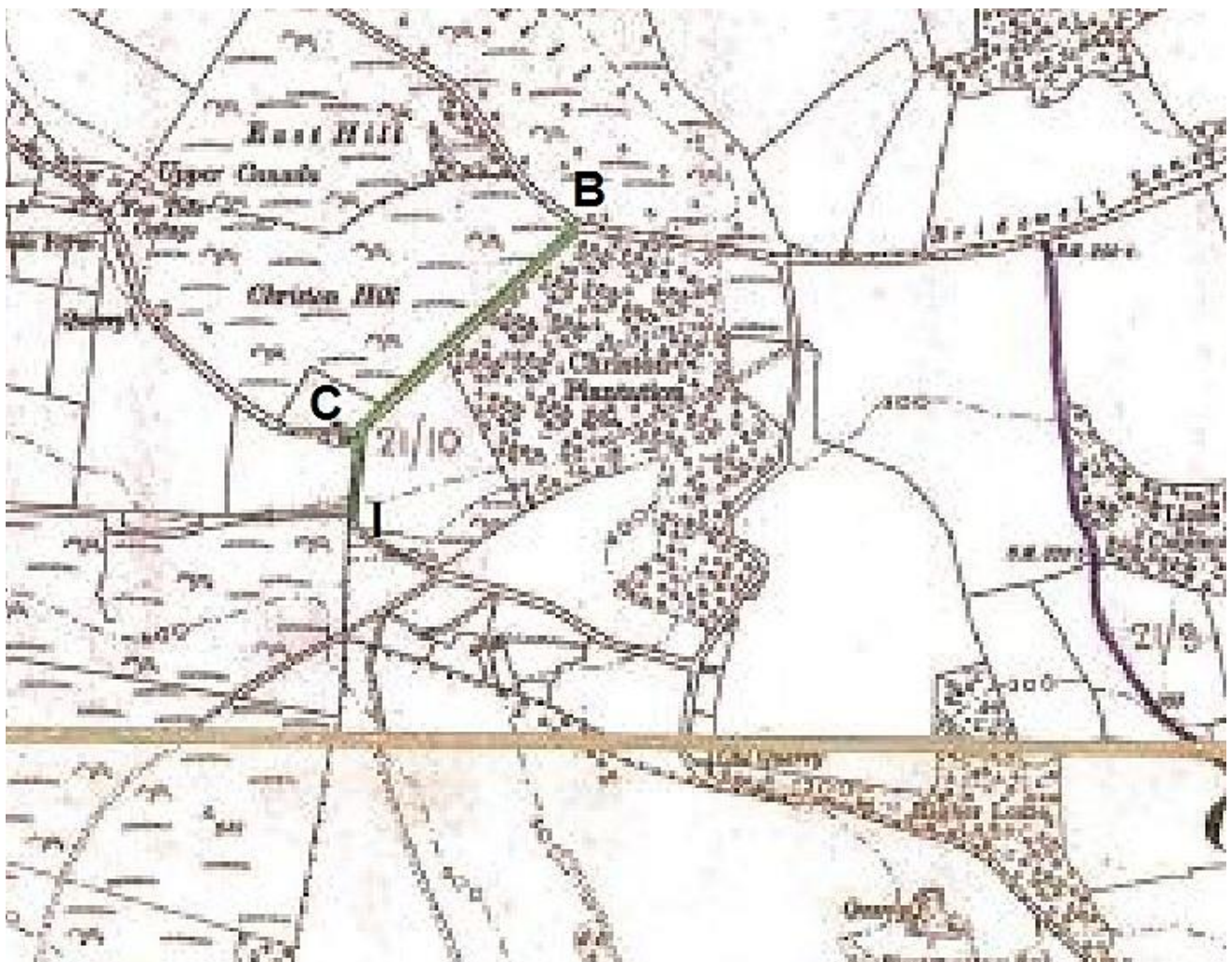
Date

25 JUN 1957

Chairman/Clerk



DOCUMENT 13
Axbridge Rural District Council Draft Map Modification Map



DOCUMENT 14
Axbridge Rural District Council Provisional Map

